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No. 93-723

In the Supreme Court of the United States

OCTOBER TERM, 1993

UNITED STATES OF AMERICA, PETITIONER

v.

X-CITEMENT VIDEO, INC., AND RUBIN GOTTESMAN

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED
NOVEMBER 5, 1993
CERTIORARI GRANTED FEBRUARY 28, 1994

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CR 88-295 KN

UNITED STATES OF AMERICA, PLAINTIFF

v.

RUBIN GOTTESMAN, INDIVIDUALLY AND DBA AS
R.G. SALES COMPANY, X-CITEMENT VIDEO, INC.,
DEFENDANTS

DOCKET ENTRIES

04/06/88	1	Filed indictment (JUDGE EICK) (Dkt'd 04/12/88).
		Order bench warrant issued (JUDGE EICK) (Dkt'd 04/12/88).
		Bench warrant issued (Dkt'd 04/12/88).
	2	–FLD CR-72 BY AUSA ROBERTA M YANG. FG. (Dkt'd 04/12/88).
04/07/88	6	Notice filed (FLD NOTC OF POST-RESTRAINT HRG ON RESTRNG ORD ISSUED EX PARTE PURS TO 18:2253. FG.) (Dkt'd 04/12/88).
	7	–FLD GOV'T NOTC OF FILING APPLC FOR RESTRNG ORD & RESTRNG ORD PURS TO 18:2253 UNDER SEAL. FG. (Dkt'd 04/12/88).
	8	–FLD GOVT'S EX PARTE APPLC FOR RESTRNG ORD. FG. (Dkt'd 04/12/88).

9 Notice filed (FLD NOTC OF POST-RESTRAINT HRG ON RESTNG ORD ISSUED EX PARTE PURS TO 18:1963(D)(1)(A). FG.) (Dkt'd 04/12/88).

10 –FLD GOVT'S EX PARTE APPL FOR RESTNG ORD PURS TO 18:1963(D)(1)(A). FG. (Dkt'd 04/12/88).

11 –GOVT'S NOTC OF FILING APPLC FOR RESTNG ORD & RESTRNG ORD PURST TO 18:1963(D)(1)(A) UNDER SEAL. FG. (Dkt'd 04/12/88).

12 –GOVT'S EX PARTE MOTN TO SEAL INDICTMENT. FG. (Dkt'd 04/12/88).

13 Order filed (FLD ORD SEALING INDICTMENT. FG.) (JUDGE EICK) (Dkt'd 04/12/88).

14 Order filed (FLD RESTRAINING ORD ISSUED PURS TO 18:1963(D)(1)(A). FG.) (JUDGE HATTER) (Dkt'd 04/12/88).

15 Order filed (FLD RESTRAINING ORD ISSUED PURS TO 18/2253. FG.) (JUDGE HATTER) (Dkt'd 04/12/88).

04/08/88 –DEFT ARRESTED. FG. (Dkt'd 04/12/88).

–(Dkt'd 04/12/88).

–(Dkt'd 04/12/88).

Order corporate surety/cash or in the alternative, personal appearance bail set in the amount of $175,000.00 (A/B W/10% CASH DEP W JUST AFFID OF SURETY & DEED OF PROP, COLL BND OF $175,000 OR CORP SURETY BND OF $175,000 UNTIL 4/15/88 TO FULFILL CONDS, RELSE F/W, SURR PASSPORTS, TRVL RESTR TO CDC, PSA SUPRV, NOT TO ENTER PLACES OF EGRESS W/C PERMITS EXIT FROM CDC. FG.) (Dkt'd 04/12/88).

17 Notice filed (FLD NOTC DIRECT DFT TO APPR FOR ARRN ON INDICT. FG.) (Dkt'd 04/12/88).

17 Arraignment and plea set for 04/11/88 @ 8:30 AM (Counts 1-12) (Dkt'd 04/12/88).

19 Arraignment held (Counts 1-12) (DFT ARRN, DFT INFORMED OF CHRGE & RGHT TO APPT OF CNSL, DFT ADVISED OF CONSEQ OF FALSE STATEMNT OF FIN AFFID, ATTY HAWKINS APPTD/DFPD, TO APPR BEFR FBI FOR BOOKING ON 4/11/88, RELSE ORD #8374. FG.) (JUDGE EICK) (Dkt'd 04/12/88).

19 Arraignment and plea continued to 04/11/88 @ 8:30 AM (Counts 1-12) (POST INDICT ARRN BEFORE MAG REICHMANN. FG.) (JUDGE EICK) (Dkt'd 04/12/88).

		Defendant's first appearance (Dkt'd 04/12/88).
04/11/88	20	Arraignment held (Counts 1-12) (DFT ARRN, STATES T/N AS CHRG, DFT PLNG TO ALL CNTS, CRT ORD JURY TRIAL BEFR JDG KENYON ON 6/7/88 AT 8:00AM, CRT ORDS NOTC TO CNSL & DISCOVERY & INSPECTION ORD ISSUED, DFT GOTTESMAN PLNG TO ALL 12 CNTS, ORENSTEIN PLNG TO CNTS 1-10, X-CITEMENT VIDEO BY ARTHUR SCHWARTS PLN TO CNTS 1-11, R G SALES BY ARTHUR SCHWARTS PLNG TO CTS 7, 9, 11 OF INDICT AS CHRGD. FG.) (MAGISTRATE REICHMANN) (Dkt'd 04/19/88).
		Attorney SCHWARTZ, ARTHUR added to case (MAGISTRATE REICHMANN) (Dkt'd 04/19/88).
		Defendant appears with counsel (Dkt'd 04/19/88).
		–FLD FIN AFFID FOR STEVEN ORENSTEIN, FLD STATEMENTS OF DEFTS' CONST RIGHTS. FG. (Dkt'd 04/19/88).
		Defendant enters plea of not guilty (Counts 1-12) (MAGISTRATE REICHMANN) (Dkt'd 04/19/88).
		Trial date set for 06/07/88 @ 8:00 AM (Counts 1-12) (MAGISTRATE REICHMANN) (Dkt'd 04/19/88).

04/15/88	22	Filed bench warrant returned executed, executed on 04/08/88 (Dkt'd 04/20/88).
04/19/88	24	Filed stipulation between the government and defendant (FLD DEFT'S STIP TO MOD TERMS OF PAYMENT OF BND. FG. SINCE DEFT IS UNABLE TO PAY ALL SUMS AS REQ BY CRT W/IN SPEC TIME, GOVT & DEFT STIP THAT CRT AMENDS ORD OF PAYMNT AS FOLLOWS: BY TENDERING TO USDC CLRK A DEED TO DEFT'S RESIDNCE W/EQUITY OF $125,000 O/B 4/15/88, BY DEPOSITING W/CLRK OF USDC SUM OF $5,000 O/B 4/15/88 & THEREAFTER DEPOSITING $5,000 OR MORE EACH 30 DAYS UNTIL ENTIRE SUM OF $17,500 IS REC'D BY CLRK. FG.) (Dkt'd 04/25/88).
	24	Order filed (CRT APPRVS FOREGOING STIP & BAIL ND PAYMENTS TO BE MADE BY DEFT RUBIN DOTTESMAN ARE MOD IN ACCORD W/STIP. FG.) (JUDGE KENYON) (Dkt'd 04/25/88).
04/22/88	23	Bond (REC'D DEFT'S U.S. PASSPORT, FILED IN EXHB ROOM. FG.) (Dkt'd 04/22/88).
05/04/88	27	–FLD GOVT'S EX PARTE APPLC TO UNSEAL GOVT'S MOTN TO SEAL INDICT & ORD. FG. (Dkt'd 05/06/88).

05/10/88 30 —FLD GOVT'S DECLR OF ROBERT M YANG IN SUPP OF GOVT'S EX PARTE APPLC TO UNSEAL GOVT'S MOTN TO SEAL INDICT & ORD. FG. (Dkt'd 05/13/88).

31 Order filed (FLD ORD RE GOVT'S EX PARTE MOTN TO SEAL INDICT & ORD FILED IN THIS CASE & THEREAFTER SEALED SHALL BE UNSEALD FOR INSPECTION & DISCLRSR IN DISCOV PROC. FG.) (JUDGE KENYON) (Dkt'd 05/13/88).

05/13/88 32 —FLD GOVT'S APPLC FOR REVOC OF BONDS OF RELSE & FOR PRE-TRIAL DETN. LODGED ORDER. FG. (Dkt'd 05/17/88).

05/16/88 33 Status hearing held (DEFTS REQ THAT CRT DECLR THIS A COMPLEX CASE. GOVT AGREES. CRT DECLRS CASE COMPLEX UNDER SPEEDY TRIAL RULES. CRT SETS FOLLOWING DATES: ALL MOTNS ARE TO BE FILED W/IN 30 DAYS & SET FOR HRG ON 8/8/88 AT 1:30PM. GOVT'S OPPOS IS DUE W/IN 30 DAYS AFTR MOTNS ARE FILED. TRIAL IS CONT TO 8/30/88 AT 8:00AM. GOVT TO PREP EXCLDBLE TIME ORD. CRT SETS HRG ON DEFT ORENSTEIN'S MOTN FOR REINSTATEMENT OF BAIL ON 5/19/88 AT 2:00PM. CRT SETS FURTH STAT CONF ON 5/23/88 @ 2:00PM RE FINAL

DETERM OF CNSL FOR DEFT R.G. SALES. DEFT GOTTESMAN TO APPEAR ON 5/19/88 AT 2:00PM FOR STAT OF BAIL. FG.) (JUDGE KENYON) (Dkt'd 05/18/88).

33 Trial date continued to 08/30/88 @ 8:00 AM (Counts 1-12) (JUDGE KENYON) (Dkt'd 05/18/88).

33 Bail hearing set for 05/19/88 @ 2:00 PM (DEFT GOTTESMAN TO APPR FOR STAT OF BAIL. FG.) (JUDGE KENYON) (Dkt'd 05/18/88).

34 —FLD APPLC OF NON-RESIDENT ATTY TO APPR IN SPECF CASE, DESIGNATION & APPR OF CNSL. FG. (Dkt'd 05/18/88).

36 Bond (FLD LTR FROM US DEPT OF STATE RE PASSPORT & ORD PROHIBIT DEFT FROM LEAVING US. FG.) (Dkt'd 05/18/88).

05/17/88 37 Motion filed (MOT #1) (FLD DEFT RUBIN GOTTESMAN'S MOTN FOR MOD OF BAIL BND CONDS PEND TRIAL. FG.) (Dkt'd 05/20/88).

05/19/88 39 Bail hearing held (DEFT ORENSTEIN'S MOTN FOR REINSTATE OF BAIL. CRT HEARS STATE OF CNSL. CRT REINSTATES DEFT ORENSTEIN'S BND UNDER SAME TERMS & CONDS & ADD'L COND THAT DEFT SHALL HAVE INCRSED FREQUENCY OF DRG TESTNG & PARTCIPT IN AN OUT-

PATIENT DRG CNSLNG PROG. CRT HEARS STATE OF CNSL TO MOD BND AS TO DEFT GOTTESMAN. CRT MOD BOND AS FOLLOWS: APPEAR BND $100,000 W/10% CASH DEP W/JUST AFF OF SURETY & W/DEED OF PROP OF $100,000 C/S, W FURTH CONDS: PSA SUPRV, SURRN PASSPORT TO CLRK OF CT, TRVL RESTRC TO CDC, NOT ENTER PREM OF ANY AIRPORT/SEAPORT TERM W/C PERM EXIT FROM CONT U.S., NOT ENTER PREM OF ANY RAILRD, BUS, AIRPORT OR SEAPORT TERM W/C PERMITS EXIT FROM AREA OF RESTRCTD TRVL W/O PERM OF CRT OF PSA. CRT CONT STAT CONF SET ON 5/23/88 TO 6/14/88 @ 2:00PM. FG.) (JUDGE KENYON) (Dkt'd 05/25/88).

39 Order conditions of bond modified (CRT HRS STATE OF CNSL TO MOD BND AS TO DEFT GOTTESMAN. CRT MOD BND AS FOLLOWS: A/B OF $100,000 W/CASH DEP OF 10% W/JUST AFFID OF SURETY & W/DEED OF PROP OR $100,000 C/S, W/ FURTH CONDS: PSA SUPRV, SURRN PASSPORT TO CLRK OF CRT, TRVL REXTC TO CDC, NOT ENTER PREM OF ANY AIRPORT/SEAPORT TERM W/C PERM EXIT

FROM CONT U.S., NOT ENTER PREM OF ANY RAILROAD, BUS, AIRPORT OR SEAPORT TERM W/C PERM EXIT FROM AREA OF RESTRC TRVL W/O PERM OF CRT OR PSA. FG.) (JUDGE KENYON) (Dkt'd 05/25/88).

39 Status hearing continued to 06/14/88 @ 2:00 PM (CRT CONT STAT CONF SET ON 5/23/88 TO 6/14/88 @ 2:00PM. FG.) (JUDGE KENYON) (Dkt'd 05/25/88).

06/08/88 40 –FLD GOVT'S PROP ORD FOR EXCLUSIN OF TIME UNDER SPEEDY TRIAL ACT. FG. (Dkt'd 06/14/88).

06/09/88 41 Motion filed (MOT #2) (FLD GOVT'S MOTN FOR DISQUALIFICATION OF CNSL FOR MULTPLE REPRESNT. MEMO OF PTS & AUTH. DECLR OF KEVIN C POOLE. NOTC OF HRG. HRG DATE 6/14/88 AT 2:00PM. FG.) (Dkt'd 06/14/88).

06/14/88 42 Motion filed (MOT #3) (FLD DEFT RUBIN GOTTESMAN'S MOTN FOR LEAVE TO FILE SUPPLMT'L MOTNS. FG.) (Dkt'd 06/16/88).

43 Motion to dismiss filed (MOT #4) (Counts 1-8) (FLD DEFT RUBIN GOTTESMAN'S MOTN TO DISM CNTS 1-8 OF INDICT & ALL ALLEG REL TO FORFEITURE ON BASIS THAT 18:1462 IS UNCONST. HRG DATE 8/8/88 AT 8:30AM. FG.) (Dkt'd 06/16/88).

44 Motion to dismiss filed (MOT #5) (Counts 1-2) (FLD RUBIN GOTTESMAN'S MOTN TO DISM CNTS 1-2 OF INDICT & ALL ALLEG OF FORFTR REL THERETO ON BASIS THAT 18:1962 & 1963 ARE UNCONST. HRG DATE 8/8/88 AT 8:30AM. FG.) (Dkt'd 06/16/88).

45 Filed memorandum in support of motion to dismiss (MOT #5) (FLD MEMO IN SUPPORT OF DEFT RUBIN GOTTESMAN'S MOTN TO DISM CNTS 1-2 OF INDICT & ALL ALLEG OF FORFEITURE AS THEY RELATE TO DAID DEFT ON BASIS THAT 18: USC 1962 & 1963 ARE UNCONST. FG.) (Dkt'd 06/16/88).

46 Motion filed (MOT #6) (FLD DEFT'S RUBIN GOTTESMAN'S MOTN TO PRESERVE & TO TIMELY PRODUCE AGENT'S ROUGH NOTES. HRG DATE 8/8/88 AT 8:30AM. FG.) (Dkt'd 06/16/88).

47 Motion filed (MOT #7) (FLD DEFT RUBIN GOTTESMAN'S MOTN FOR AN ORD REQ GOVT TO GIVE NOTC OF ITS INTENT TO USE EVID OF OTHER CRIMES, WRONGS OR BAD ACTS & MEMO OF PTS & AUTH. HRG DATE: 8/8/88 AT 8:30AM. FG.) (Dkt'd 06/16/88).

48 Motion filed (MOT #8) (FLD DEFT RUBIN GOTTESMAN'S MOTN FOR JAMES HRG PURS TO FED RULE

OF EVID 801(D)(2)(E). HRG DATE 8/8/88 AT 8:30AM. FG.) (Dkt'd 06/16/88).

49 Motion filed (MOT #9) (FLD RUBIN GOTTESMAN'S MOTN FOR A BIFURCATED TRIAL. HRG DATE 8/8/88 AT 8:30AM. FG.) (Dkt'd 06/16/88).

50 Filed memorandum in support of motion (MOT #9) (FLD MEMO IN SUPPORT OF DEFT RUBIN GOTTESMAN'S MOTN FOR A BIFURCATED TRIAL. HRG DATE: 8/8/88 AT 8:30AM. FG.) (Dkt'd 06/16/88).

51 Motion filed (MOT #10) (FLD DEFT RUBIN GOTTESMAN'S MOTN FOR DISCLSR OF IMPEACHING INFO & INC MEMO OF PTS & AUTH. HRG DATE 8/8/88 AT 8:30AM. FG.) (Dkt'd 06/16/88).

52 Motion filed (MOT #11) (FLD DEFT RUBIN GOTTESMAN'S MOTN FOR PROD OF EXCULPATORY MATERIAL & INC MEMO OF PTS & AUTH. HRG DATE 8/8/88 AT 8:30AM. FG.) (Dkt'd 06/16/88).

53 Motion for joinder filed (MOT #12) (Counts 1-12) (FLD DEFT RUBIN GOTTESMAN'S MOTN TO JOIN IN & ADOPT MOTNS OF CO-DEFTS. HRG DATE 8/8/88 AT 8:30AM. FG.) (Dkt'd 06/16/88).

54 Motion filed (MOT #13) (FLD DEFT RUBIN BOTTESMAN'S MOTN FOR PRODUCTION OF ALL JENCKS MATERIALS & MEMO OF PTS & AUTH. HRG DATE 8/8/88 AT 8:30AM. FG.) (Dkt'd 06/16/88).

55 Motion to dismiss filed (MOT #14) (Counts 1-11) (FLD RUBIN GOTTESMAN'S MTON TO DISM CNTS 1-11 OF INDICT & ALL FORFEITURE ALLEF REL THERETO W/RESPECT TO SAID DEFT, FOR FAILURE TO ALLEGE THAT DEFT KNEW CONTENT & CHARACTER OF ALLEGEDLY OBSCENE MATERIAL. HRG DATE 8/8/88 AT 8:30AM. FG.) (Dkt'd 06/16/88).

56 Motion to dismiss filed (MOT #15) (Counts 1-8) (FLD DEFT RUBIN GOTTESMAN'S MOTN TO DISM CNTS 1-8, INCLUSIVE, OF INDICT. HRG DATE 8/8/88 AT 8:30AM. FG.) (Dkt'd 06/16/88).

57 Motion for discovery/inspection filed (MOT #16) (Counts 1-12) (FLD DEFT RUBIN GOTTESMAN'S MOTN FOR DISCOVRY PURS TO FED RULES OF CRIM PROC R-16 & INC MEMO OF PTS & AUTH. HRG DATE 8/8/88 AT 8:30AM. FG.) (Dkt'd 06/16/88).

58 Motion to suppress evidence filed (MOT #17) (Counts 1-12) (FLD DEFT RUBIN GOTTESMAN'S MOTN TO SUPPRESS & INC MEMO OF PTS &

AUTH. HRG DATE 8/8/88 AT 8:30AM. FG.) (Dkt'd 06/16/88).

59 Motion for joinder filed (MOT #18) (Counts 1-12) (FLD GOVT JOINT MOT FOR MOD OF RESTRNG ORD ISSD PURS TO 18:1963(D)(1)(A). FG.) (Dkt'd 06/17/88).

60 Order filed (FLD ORD MOD RESTRNG ORD ISSD PURS TO 18:1963 (D)(1)(A). FG.) (JUDGE KENYON) (Dkt'd 06/17/88).

61 Order filed (FLD ORD MOD RESTRNG ORD ISSUED PURS TO 18:2253. FG.) (JUDGE KENYON) (Dkt'd 06/17/88).

62 Motion for joinder filed (MOT #19) (Counts 1-12) (FLD JOINT MOTN FOR MOD OF RESTRNG ORD ISSUD PURS TO 18:2253. FG.) (Dkt'd 06/17/88).

63 Order filed (FLD ORD RE STIP RE BND FOR DEFT RUBIN GOTTESMAN. HEREBY ORD THAT STIP BE APPRVD & ENT OF REC. FG.) (JUDGE KENYON) (Dkt'd 06/17/88).

64 Filed stipulation between the government and defendant (FLD GOVT'S STIP RE BND FOR DEFT RUBIN GOTTESMAN. FG.) (Dkt'd 06/17/88).

65 Status hearing held (DEFTS' CNSL REQ ADDT'L 7 DAYS TO FILE MOTNS. CRT GRANTS REQ. DEFT MAY FILE RESPNSE TO MOTN

NOT TO EXCEED 47 PAGES. CRT & CNSL DEISCUSS POTENTIAL CONFLICT OF CNSL AS TO DEFTS X-CITMENT VIDEO & R. G. SALES CO. IT IS DETRMD THAT R.G. SALES CO IS A DBA OF RUBIN GOTTESMAN & THEREFORE CONFLICT DOESN'T EXIST. FG.) (JUDGE KENYON) (Dkt'd 06/22/88).

06/16/88 66 —FLD GOVT'S APPLC FOR WAIVER OF LOCAL R-3.10. LODGED ORD. FG. (Dkt'd 06/22/88).

67 Motion filed (MOT #20) (FLD GOVT'S MOTN FOR DISCLSR OF EVID BY DEFTS. LODGED ORD. FG.) (Dkt'd 06/22/88).

68 —FLD GOVT'S APPLC FOR EXTNSN OF TIME TO FILE MOTIONS. FG. (Dkt'd 06/22/88).

69 Motion in Limine filed (MOT #21) (Counts 1-12) (FLD GOVT'S MOTN IN LIMINE. FG.) (Dkt'd 06/22/88).

70 Motion for joinder filed (MOT #22) (Counts 1-12) (FLD DEFT STEVEN ORENSTEIN'S MOTN TO ADOPT & JOIN IN MOTNS OF CO-DEFT. HRG DATE 8/8/88 AT 1:30PM. FG.) (Dkt'd 06/22/88).

71 Motion for severance/separate trial filed (MOT #23) (Counts 1-12) (FLD MOTN OF DEFT STEVEN ORENSTEIN FOR SEVERANCE PURS TO R-8(B) & 14. HRG DATE 8/8/88 AT 1:30PM. FG.) (Dkt'd 06/22/88).

72 Motion filed (MOT #24) (FLD MOTN OF DEFT STEVEN ORENSTEIN TO STRIKE PREDJCL SURPLUSAGE FROM INDICT. HRG DATE 8/8/88 @ 1:30PM. FG.) (Dkt'd 06/22/88).

73 Motion to dismiss filed (MOT #25) (Counts 1-12) (FLD DEFT ORENSTEIN'S MOTN TO DISM CNTS 1-7 OF INDICT UNDER NOTC CLAUSE OF 6TH AMENDMENT, INDICT CLAUSE OF 5TH AMENDMENT & FOR FAILURE TO STATE AN OFFENSE. HRG DATE: 8/8/88 AT 1:30PM. FG.) (Dkt'd 06/22/88).

74 Motion to dismiss filed (MOT #26) (Counts 1-12) (FLD DEFT STEVEN ORENSTEIN'S MOTN TO DISM CNTS 1 & 2 OF INDICT & THEIR RELATED FORFEITURE ALLEGATIONS FOR FAILURE TO STATE AN OFFENSE. HRG DATE 8/8/88 AT 1:30PM. FG.) (Dkt'd 06/22/88).

75 Motion for a bill of particulars filed (MOT #27) (Counts 1-12) (FLD MOTN OF DEFT STEVEN ORENSTEIN FOR A BILL OF PARTICULARS. HRG DATE 8/8/88 AT 1:30PM. FG.) (Dkt'd 06/22/88).

76 Motion to dismiss filed (MOT #28) (Counts 1-12) (FLD DEFT STEVEN ORENSTEIN'S MOTN TO DISM CNTS 1-2 OF INDICT & THEIR CORRESPOND FORFEITURE ALLEG ON GRND THAT STATUTES UPON

WHICH THEY ARE PREMISED & ARE UNCONST ON THEIR FACE & IS APPLIED UNDER 1ST & 5TH AMENDMENTS TO US CONST. HRG DATE 8/8/88 AT 1:30PM. FG.) (Dkt'd 06/22/88).

06/17/88 77 –FLD RUBIN GOTTESMAN'S AMENDED NOTICE OF MOTN. HRG DATE 8/8/88 AT 1:30PM. FG. (Dkt'd 06/22/88).

78 Filed memorandum in support of motion in Limine (MOT #21) (FLD GOVT'S MEMO OF PTS & AUTH IN SUPPORT OF MOTN IN LIMINE. FG.) (Dkt'd 06/28/88).

79 –FLD SUPPLMTL DECLR BY ROBERT M YANG IN SUPPORT OF GOVT'S APPLC FOR EXT OF TIME TO FILE MOTNS. FG. (Dkt'd 06/28/88).

80 –FLD SUPPL DECLR BY ROBERTAY M YANG IN SUPPORT OF GOVT'S APPLC FOR WVR OF LOCAL R-3.10. FG. (Dkt'd 06/28/88).

81 Notice filed (FLD GOVT'S NOTC OF HRG ON GOVT'S MOTN IN LIMINE. HRG DATE 8/8/88 AT 1:30PM. FG.) (Dkt'd 06/28/88).

82 Notice filed (FLD NOTC OF HRG ON GOVT'S MOTN FOR DISCLSR OF EVID BY DEFT. FG. HRG DATE 8/8/88 AT 1:30PM. FG.) (Dkt'd 06/28/88).

06/20/88 83 Notice filed (FLD DEFT STEVEN ORENSTEIN'S NOTC OF CORRECTN OF TIME OF HRG ON PRETRIAL MOTNS FILED ON 6/16/88. HRG DATE 8/8/88 AT 1:30PM. FG.) (Dkt'd 06/28/88).

06/21/88 85 Notice filed (FLD NOTC OF ADOPTION AND JOINDER. FG.) (Dkt'd 06/30/88).

06/23/88 84 Motion to dismiss filed (MOT #29) (Counts 9-10) (FLD DEFT STEVEN ORENSTEIN'S MOTN TO DISM CNTS 9 & 10 OF INDICT UNDER NOTC CLAUSE OF 6TH AMENDMENT, INDICT CLAUSE OF 5TH AMENDMENT & FOR FAILURE TO STATE AN OFFNSE. HRG DATE 8/8/88 AT 1:30PM. FG.) (Dkt'd 06/28/88).

86 Motion to dismiss filed (MOT #31) (Counts 9-10) (FLD DEFT STEVEN ORENSTEIN'S MOTN TO DISM CNTS 9 & 10 OF INDICT & THEIR CORRESP FORFEITURE ALLEG ON GRND THAT STATUTES UPON W/C THEY ARE PREMISED ARE UNCONST UNDER 1ST AMENDMENT TO U.S. CONST. HRG DATE 8/8/88 AT 1:30PM. FG.) (Dkt'd 06/30/88).

07/15/88 87 –FLD GOVT'S RESPNSE TO DEFT GOTTESMAN'S MOTN FOR PROD OF EXCULPATORY MAT. HRG DATE 8/8/88 AT 1:30PM. FG. (Dkt'd 07/20/88).

88 —FLD GOVT'S RESPNSE TO DEFT GOTESMAN'S MOTN FOR BIFURCATED TRIAL. HRG DATE 8/8/88 AT 1:30PM. FG. (Dkt'd 07/20/88).

89 Memorandum in opposition to motion (MOT #8) (FLD GOVT'S OPPOS TO DEFT GOTTESMAN'S MOTN FOR A JAMES HRG PURS TO FED RULES OF EVID 802(D)(2)(E). HRG DATE 8/8/88 AT 1:30PM. FG.) (Dkt'd 07/20/88).

90 —FLD GOVT'S RESPNSE TO DEFT GOTTESMAN'S MOTN FOR DISCLSR OF IMPEACHING INFO. HRG DATE 8/8/88 AT 1:30PM. FG. (Dkt'd 07/20/88).

91 —FLD GOVT'S RESPNSE TO DEFT GOTTESMAN'S MOTN TO PRESERVE & TO TIMELY PROD AGENT'S ROUGH NOTES. HRG DATE 8/8/88 AT 1:30PM. FG. (Dkt'd 07/20/88).

92 —FLD GOVT'S RESPNSE TO DEFT GOTTESMAN'S MOTN FOR PROD OF ALL JENCKS MAT. HRG DATE 8/8/88 AT 1:30PM. FG. (Dkt'd 07/20/88).

93 Memorandum in opposition to motion (MOT #7) (FLD GOVT'S OPPOS TO DEFT GOTTESMAN'S MOTN FOR AN ORD REQ GOVT TO GIVE NOTC OF ITS INTENT TO USE OTHER CRIMES, WRONGS OR BAD ACTS. HRG DATE 8/8/88 AT 1:30PM. FG.) (Dkt'd 07/20/88).

94 Memorandum in opposition to motion to dismiss (MOT #4) (FLD GOVT'S OPPOS TO DEFT GOTTESMAN'S MOTN TO DISM CNTS 1-8 OF INDICT & ALL ALLEG REL TO FORFTR ON BASIS THAT 18:1462 IS UNCONST. HRG DATE 8/8/88 AT 1:30PM. FG.) (Dkt'd 07/20/88).

95 Memorandum in opposition to motion to dismiss (MOT #5) (FLD GOVT'S OPPOS TO DEFT GOTTESMAN'S MOTN TO DISM CNTS 1 & 2 OF DINIDCT & ALL ALLEG OF FORFTR REL THERETO ON BASIS THAT 18:1962 & 1963 ARE UNCONST. HRG DATE 8/8/88 AT 1:30PM. FG.) (Dkt'd 07/20/88).

96 —FLD GOVT'S RSPNSE TO DEFT GOTTESMAN'S MOTN FOR DISCOV PURS TO FED RULES OF CRIM PROC R-16. HRG DATE 8/8/88 AT 1:30PM. FG. (Dkt'd 07/20/88).

97 —FLD GOVT'S APPLC FOR EXT OF TIME TO FILE RESPNSES. FG. (Dkt'd 07/20/88).

07/18/88 98 Memorandum in opposition to motion to dismiss (MOT #15) (FLD GOVT'S OPPOS TO DEFT GOTTESMAN'S MOTN TO DISM CNTS 1-8. HRG DATE 8/8/88 AT 1:30PM. FG.) (Dkt'd 07/22/88).

99 Memorandum in opposition to motion to dismiss (MOT #26) (FLD GOVT'S OPPOS TO DEFT GOTTESMAN'S

MOTN TO DISM CNT 1-11 & ALL FORFEITURE ALLEG FOR FAILURE TO ALLEGE THAT DEFT KNEW CONT & CHAR OF ALLEG OBSCENE MAT. FG.) (Dkt'd 07/22/88).

100 Order filed (FLD ORD GRANTING EXT OF TIME TO FILE RESPNSES. FG.) (JUDGE KENYON) (Dkt'd 07/25/88).

07/19/88 101 Memorandum in opposition to motion to suppress evidence (MOT #17) (FLD GOVT'S OPPOS TO DEFT GOTTESMNA'S MOTN TO SUPPRESS. HRG DATE 8/8/88 AT 1:30PM. FG.) (Dkt'd 07/25/88).

102 Memorandum in opposition to motion for a bill of particulars (MOT #27) (FLD GOVT'S OPPOS TO DEFT'S ORENSTEIN'S MOTN FOR BILL OF PARTICULARS. HRG DATE 8/8/88 AT 1:30PM. FG.) (Dkt'd 07/25/88).

110 Memorandum in opposition to motion in Limine (MOT #21) (FLD DEFT STEVEN ORENSTEIN'S BRIEF IN OPPOS TO PLAINTIFF'S MOTN IN LIMINE. 8/8/88 AT 1:30PM. FG.) (Dkt'd 07/28/88).

07/20/88 103 —FLD GOVT'S OPPOS TO DEFT ORENSTEIN'S MOTN TO DISM CNST 9-10 FOR FAILURE TO STATE AN OFFNSE. FG. HRG DATE: 8/8/88 AT 1:30PM. FG. (Dkt'd 07/26/88).

104 —FLD GOVT'S OPPOS TO DEFT ORENSTEIN'S MOTN TO DISM CNT 9-10 UNDER THE 1ST AMENDMENT. FG. HRG DATE: 8/8/88 AT 1:30PM. FG. (Dkt'd 07/26/88).

105 Memorandum in opposition to motion to dismiss (MOT #28) (FLD GOVT'S OPPO TO DEFT ORENSTEIN'S MOTN TO DISM CNTS 1-2 OF INDICT UNDER 1ST & 5TH AMENDMENTS. HRG DATE 8/8/88 AT 1:30PM. FG.) (Dkt'd 07/26/88).

106 Memorandum in opposition to motion to dismiss (MOT #26) (FLD GOVT'S OPPOS TO DEFT ORENSTEIN'S MOTN TO DISM CNTS 1-2 FOR FAILURE TO STATE AN OFFENSE. FG. HRG DATE 8/8/88 AT 1:30PM. FG.) (Dkt'd 07/26/88).

107 Memorandum in opposition to motion to dismiss (MOT #25) (FLD GOVT'S OPPOS TO DEFT ORENSTEIN'S MOTN TO DISM CNST 1-7 FOR FAILURE TO STATE AN OFFNSE. HRG DATE 8/8/88 AT 1:30PM. FG.) (Dkt'd 07/26/88).

07/21/88 108 —FLD GOVT'S RESPNSE TO DEFT ORENSTEIN'S MOTN FOR SEVERANCE. HRG DATE 8/8/88 AT 1:30PM. FG. (Dkt'd 07/26/88).

109 —FLD GOVT'S RESPNSE TO DEFT ORENSTEIN'S MOTN TO STIKE SURPLUSAGE. HRG DATE 8/8/88 AT 1:30PM. FG. (Dkt'd 07/26/88).

07/25/88 111 —Filed surety bond in the amount of $100,000.00 (A/B W/AFFID OF SURETY & DEED OF PROP. W/10% CASH DEP. W/DEED OF PROP. DEFT TO SURRN PASSPORTS TO CLRK OF CRT. TRVL RESTRC TO CDC. PSA SUPRV. NOT ENTER PLACES OF EGRESS W/C PERMITS EXIT FROM CDC. NOT ENTER ANY AIRPORT/SEAPORT TERM W/C PERMITS EXIT FROM CONT. U.S. FG.) (KING) (Dkt'd 07/28/88).

07/27/88 112 Order filed (FLD ORD FOR EXCLSN OF TIME UNDER SPEEDY TRIAL ACT. FG.) (JUDGE KENYON) (Dkt'd 08/01/88).

113 Excludable delay based on finding the ends of justice served by continuance began on 04/11/88 and ended on 08/30/88 (JUDGE KENYON) (Dkt'd 08/01/88).

08/01/88 115 —FLD DEFT RUBIN GOTTESMAN'S REQ FOR PERMISSN TO LEAVE JURISDICTION. FG. (Dkt'd 08/05/88).

116 Notice filed (FLD GOVT'S NOTC OF NON-OPPOS TO DEFT ORENSTEIN'S MOTN TO AMEND BAIL CONDS. FG.) (Dkt'd 08/05/88).

117 Notice filed (FLD GOVT'S NOTC OF NON-OPPOS TO DEFT GOTTESMAN'S REQ FOR PERMSN TO LEAVE JURISDCTN. FG.) (Dkt'd 08/05/88).

08/02/88 118 Status hearing held (CRT REC'D DEFT'S REQ FOR PERM TO LEAVE JURISDICTION, FLD 8/1/88. DEFT GOTTESMAN ASKS CRT FOR AN ORD GRANTING HIM PERMISSN TO LEAVE STATE OF CA TO TRVL TO LV/NV 8/1/88 TO 8/10/88 TO ATTEND VSDA NATL VIDEO TRADE SHOW. GOVT FLD NOTC OF NON-OPPOS TO DEFT'S REQ ON 8/1/88. CRT HEREBY GRANTS DEFT GOTTESMAN'S REQ. DEFT IS ADVSD THAT IN FUTURE, SUCH REQ SHLD BE MADE MORE TIMELY FASHION. IN ADDTN SUCH REQ SHLD BE ACCOMPANIED W/PROP ORD. FG.) (JUDGE KENYON) (Dkt'd 08/10/88).

119 Notice filed (FLD NOTC OF CONT OF MOTN HRG SET FOR 8/8/88 TO 8/24/88 AT 2:00PM. FG.) (Dkt'd 08/10/88).

119 Status hearing set for 08/24/88 @ 2:00 PM (JUDGE LEW) (Dkt'd 08/10/88).

08/08/88 238 Bond (FLD ORIGINAL DEED FRM COUNTY RECORDER OFC ADDRESS 7116 DECELIS PLCE VAN NUYS, CA 91406. COMMN ADDRESS 22482 CALIPATRIA DRIVE, WOODLAND HILLS, CA. SM LOT 121 OF TRACT NO 29150.) (Dkt'd 02/23/90).

Bond (FLD DEED OF TRUST OF RUBIN & BARBARA GOTTESMAN IN EXHB RM. FG.) (Dkt'd 09/09/88).

	238	Bond (FLD ORIG DEED OF TRUST FRM RECORDERS OFFICE IN L.A. PROPERTY OWNER RUBIN GOTTSMAN AND BARBARA GOTTESMAN. RJ) (Dkt'd 02/22/90).
08/10/88	122	Motion filed (MOT #34) (DFT FLD MOTN TO ADOPT DFT'S BRIEF IN OPP TO PLAINTIFF'S MOTN IN LIMINE RET 8/24/88 AT 1:30PM. SM) (Dkt'd 08/18/88).
08/22/88	123	Witness list filed (Counts 1-12) (FLD GVT'S WITNESS LIST. SM) (Dkt'd 08/23/88).
08/23/88	124	—FLD GVT'S RESPONSE TO DFT GOTTESMN MOTN TO CONT TRIAL. SM (Dkt'd 08/25/88).
08/24/88	140	Status hearing held (DEFT GOTTESMAN, ORENSTEIN & GOVT'S MOTNS. CRT HEARS STATS BY (ARTIES. CRT GRANTS & DENIES CERTAIN MONS BY CNSL. FG.) (JUDGE KENYON) (Dkt'd 10/04/88).
08/26/88	125	Filed government's proposed jury instructions (Counts 1-12) (FLD GOVT'S PROP JY INSTRC. FG.) (Dkt'd 08/30/88).
	126	Filed government's proposed jury instructions (Counts 1-12) (FLD GOVT'S SUPPLMTL PROP JY INSTRC. FG.) (Dkt'd 08/30/88).
08/29/88	127	Status hearing held (CNSL ADVS CRT THAT PARTIES HAVE REACHED AN AGREEMENT IN CASE &

		DEFTS HAS AGREED TO PLEA AGREEMNT. CRT CONT MATTER TO 8/30/88 AT 8:00AM TO ALLOW PARTIES MORE TI TO CONSID MATTERS. FG.) (JUDGE KENYON) (Dkt'd 09/15/88).
	127	Status hearing set for 08/30/88 @ 8:00 AM (JUDGE KENYON) (Dkt'd 09/15/88).
08/30/88	128	Status hearing held (CHNGE OF PLEA. W/DRAWL OF PLEA & SET OF NEW TRDAT. CASE WAS CLLD FROM CAL AT W/C TI DEFTS CHNGED THEIR PLEA F ROM N/G TO GUILTY TO CERTAIN CNTS OF INDICT. AFTER DUE CONSID OF STATE OF DEFTS CRT DID NOT TAKE PLEA & SET NEW TRDAT OF 10/3/88 AT 8:00AM. ANY MOTNS WILL BE HRD ON 9/27/88 @ 2:00PM. GOVT TO SUBMT EXCLDBLE TI ORD TO CRT. FG.) (JUDGE KENYON) (Dkt'd 09/15/88).
09/27/88	142	Order filed (FLD AGREED ORD OF FORFEITURE. INC BY REF SET FORTH IS MEMO OF PLEA AGREEMNT OF DEFT ORENSTEIN. BY AGREEMENT OF ALL PARTIES, FOLLOWING ITEMS WILL BE FORFEITED TO US GOVT EFFECTIVE UPON ENT GUILTY PLEAS REF IN MEMO OF PLEA AGREEMENT. FURTHERMORE, SAID DEFT AGREES TO DISCLOSE TO

SPECIAL AGEN KEVIN C POOLE, FBI, ANY & ALL ADD'L INTRST W/C MAY SUBJ TO FORFEITURE W/IN 24 HRS FOLLOWING ENT OF GUILTY PLEA. IN EVENT DEFT STEVEN ORENSTEIN HAS PROP CONST & DERIVED FROM PROCEEDS OBTAINED, DIRECTLY & INDIRECTLY FROM RACKETEERING 18:1962 ALL SUCH PROP WHEREVER LOC & WHATEVER NAMES HLD IS SUBJ TO FORFEITURE. IT IS ORD & ADJDGED THAT FOREGOING PROPERTY AS REF IS FORFEITED TO US. FG.) (JUDGE KENYON) (Dkt'd 10/04/88).

143 —FLD MEMO OF PLEA AGREEMENT FOR DEFT STEVEN ORENSTEIN. FG. (Dkt'd 10/04/88).

09/28/88 144 Motion filed (MOT #36) (FLD GOVT'S MOTN FOR RECONSID OF DEFT ORENSTEIN'S MOTN TO STRIKE SURPLUSAGE & MOTN FOR SEVRNCE. HRG DATE 9/29/88 AT 8:00AM. FG.) (Dkt'd 10/04/88).

09/29/88 145 Status hearing held (PROC ON GOVT'S MOTNS IN LI, STRIKE SURPLS, & DISCLSE EVID. CRT HRS STATES OF CNSL. CRT GRNTS GOVT'S MOTNS TO STRIKE & FOR DISCLSR. CRT CONTS MOTN IN LI TO 10/3/88 AT 11:00AM. DEFT MONTS FOR CONT OF TRIAL. CRT TAKES MATTER UNDER SUBMSN.

FG.) (JUDGE KENYON) (Dkt'd 10/04/88).

10/03/88 146 Status hearing held (GOVT'S MOTN IN LIMINE & DEFT'S MOTN TO CONT TRIAL. CRT HEARS ARG OF CNSL. CRT DENIES GOVT'S MOTN IN LI. CRT DENIES MOTN TO CONT TRIAL. FG.) (JUDGE KENYON) (Dkt'd 10/06/88).

Motion in limine denied (MOT #21) (JUDGE KENYON) (Dkt'd 10/06/88).

147 Defendant's requested voir dire (FLD DEFTS' JOINT PROP VOIR DIRE QUEST TO PROSP JURORS. HRG DATE 10/3/88 @ 9:00AM. FG.) (Dkt'd 10/06/88).

148 Defendant's requested voir dire (FLD PROP VOIR DIRE QUEST BY DEFT X-CITEMENT VIDEO INC. HRG DATE 10/3/88 AT 9:00AM. FG.) (Dkt'd 10/06/88).

10/04/88 149 Status hearing held (GOVT INFORMS CRT THAT ONE OF THEIR KEY WITNESSES HAS BEEN HOSP. DEFTS RENEW MOTN TO CONT TRIAL. CRT HEARS ARG OF CNSL. CRT CONT TRIAL 3/21/89 @ 8:00 AM & SETS TRIAL AS TO SEVRD CNT 12 ON 10/11/88 @ 8:00AM. GOVT TO PREP ORD FOR EXCLDBLE TIME. FG.) (JUDGE KENYON) (Dkt'd 10/06/88).

		Trial date continued to 10/11/88 @ 8:00 AM (Count 12) (JUDGE KENYON) (Dkt'd 10/06/88).
		Trial date continued to 03/21/89 @ 8:00 AM (Counts 1-11) (JUDGE KENYON) (Dkt'd 10/06/88).
10/05/88	150	Notice filed (FLD GOVT'S NOTC OF FILING WITN STATEMT UNDER SEAL. FG.) (Dkt'd 10/06/88).
	151	–FLD GOVT'S WITN STATEMTS FILED UNDER SEAL. FG. (Dkt'd 10/06/88).
10/06/88	152	Motion in limine filed (MOT #37) (Counts 1-12) (FLD GOVT'S MOTN IN LI & MEMO PTS & AUTH IN SUPPORT THEREOF. FG.) (Dkt'd 10/11/88).
10/13/88	153	Trial begins-bench (Counts 1-12) (JUDGE KENYON) (Dkt'd 10/18/88).
		Trial held-bench (Counts 1-12) (C/T AST DAY. CNT 12 ONLY–DEFT RENEWS MOTN TO SUPP EVID OF FIREARM. CRT DENIES MOTN. WITN CLLD, SWRN, TSTFD. EXHB MARKED & ADMTD. PLTF REST. DEFT REST. CRT ORDS CASE AGENT TO RETAIN CUST OF EXHB 105 (GUN). CRT CONTS TRIAL TO 10/12/88 AT 8:00AM FOR CLSNG ARG. FG.) (JUDGE KENYON) (Dkt'd 10/18/88).
		Bench trial continued to 10/14/88 @ 8:00 AM (CONT TO 2ND B/T. FG.) (JUDGE KENYON) (Dkt'd 10/18/88).

	154	Filed waiver of jury trial (FLD DFT'S WVR OF TRIAL BY JY & WVR OF SP FINDINGS OF FACT (R- 23(A) & (C) FRCP). FG.) (JUDGE KENYON) (Dkt'd 10/18/88).
10/14/88	155	Trial held-bench (Counts 1-12) (C/T 2ND DAY. A) (JUDGE KENYON) (Dkt'd 10/19/88).
		Trial ends-bench (Count 12) (JUDGE KENYON) (Dkt'd 10/19/88).
		Court judgment of not guilty (Count 12) (JUDGE KENYON) (Dkt'd 10/19/88).
	163	Exhibit list filed (Count 12) (FLD LSIT OF EXHB & WITN. FG.) (Dkt'd 11/07/88).
10/27/88	157	–FLD GOVT'S RESPNSE TO DEFT ORENSTEIN'S MOTN FOR CONT OF SENT. FG. (Dkt'd 11/01/88).
	158	–FLD GOVT'S REVISED PROP ORD FOR EXCLSN OF TIME UNDER SPEEDY TRIAL ACT. FG. (Dkt'd 11/01/88).
10/28/88	161	Order filed (FLD ORD FOR EXCLSN OF TIME UNDER SPEEDY TRIAL ACT. FG.) (JUDGE KENYON) (Dkt'd 11/04/88).
10/31/88	159	–FLD GOVT'S ADDT'L PROP JY INSTRC. FG. (Dkt'd 11/02/88).
	162	Excludable delay based on finding the ends of justice served by continuance began on 10/04/88 and ended on 03/21/89 (JUDGE KENYON) (Dkt'd 11/04/88).

12/09/88	164	–FLD DECLR OF MICHAEL N BERKE IN SUPP OF APPLC FOR AN ORD ON BEHALF OF GOTTESMAN & ORENSTEIN. FG. (Dkt'd 12/14/88).
12/13/88	165	Order conditions of bond modified (FLD ORD THAT DEFTS RUBIN GOTTESMAN & STEVEN ORENSTEIN BE PERMTD TO TRVL TO LAS VEGAS TO ATTEND CONSUMER ELEC SHOW FOR 1/6/89 TO 1/11/89. FG.) (JUDGE KENYON) (Dkt'd 12/14/88).
03/15/89	166	–FLD GOVT'S TRIAL BRIEF. HRG DATE 3/21/89 AT 1:30PM. FG. (Dkt'd 03/24/89).
03/16/89	167	Status hearing held (CRT & CNSL CONFER. CRT CONT TRIAL TO 4/11/89 AT 8:00AM. FG.) (JUDGE KENYON) (Dkt'd 03/24/89).
04/10/89	169	Motion filed (MOT #39) (FLD DEFT GOTTESMAN S MOTN TO WV JY. FG.) (Dkt'd 04/13/89).
	170	Waiver of jury trial (Counts 1-11) (FLD JY WVR BY DFT X-CITEMENT VIDEO, INC. FG.) (Dkt'd 04/13/89).
	171	–FLD GOVT'S RESPNSE TO DEFTS' MOTN TO WVE J/T. FG. (Dkt'd 04/13/89).
04/11/89	172	Witness list filed (Counts 1-11) (FLD GOVT'S 3RD AMENDED WITN LIST. FG.) (Dkt'd 04/19/89).
04/12/89	173	–FLD LTR FROM US DEPT OF JUST, WASHINGTON DC. FG. (Dkt'd 04/19/89).

	174	–FLD LTR FROM US DEPT OF JUST, CRIMNL DIV, WASHINGTON DC. FG. (Dkt'd 04/19/89).
	177	Trial held-bench (Counts 1-8) (JUDGE KENYON) (Dkt'd 06/01/89).
		Bench trial continued to 04/13/89 @ 9:15 AM (JUDGE KENYON) (Dkt'd 06/01/89).
04/13/89	178	Trial held-bench (Counts 1-11) (CT 2ND DAY. PLTF WTN C/S/T: PETERS, MRK EXHB. FG.) (JUDGE KENYON) (Dkt'd 06/01/89).
		Bench trial continued to 04/14/89 @ 8:00 AM (CONT TO 3RD B/T. FG.) (JUDGE KENYON) (Dkt'd 06/01/89).
	179	Witness list filed (Counts 1-11) (FLD GOVT'S 4TH AMENDED WITN LIST. FG.) (Dkt'd 06/01/89).
04/14/89	175	Exhibit list filed (Counts 1-11) (FLD GOVT'S 2ND AMENDED EXHB LST. FG.) (Dkt'd 04/21/89).
	180	Trial held-bench (Counts 1-11) (C/T 3RD DAY. GOV WITN PETERS RESUMES. GOV WITN C/S/T TAKESHITA. ID'D EXHS. CONT TO 4/17/89 AT 8:00AM. FG.) (JUDGE KENYON) (Dkt'd 06/01/89).
		Bench trial continued to 04/17/89 @ 8:00 AM (CONT TO 4TH B/T. FG.) (JUDGE KENYON) (Dkt'd 06/01/89).
04/17/89	181	Trial held-bench (Counts 1-11) (C/T 4TH DAY. WITN TAKESHITA RESUMES TESTMNY. EXHB MRKD.

TRIAL CONT TO 4/19/89 AT 8:00AM. FG.) (JUDGE KENYON) (Dkt'd 06/01/89).

Bench trial continued to 04/19/89 @ 8:00 AM (CONT TO 5TH B/T. FG.) (JUDGE KENYON) (Dkt'd 06/01/89).

04/19/89 182 Trial held-bench (Counts 1-11) (C/T 5TH DAT. WITN RESUMES TEST-MNY. CRT VIEWS VIDEO TAPES. EXHB MRKD. CRT CONTS TRIAL TO 4/25/89 AT 8:00AM. FG.) (JUDGE KENYON) (Dkt'd 06/01/89).

Bench trial continued to 04/25/89 @ 8:00 AM (CONT TO 6TH B/T. FG.) (JUDGE KENYON) (Dkt'd 06/01/89).

04/25/89 183 Trial held-bench (Counts 1-11) (C/T 6TH DAY. WITN TAKESHITA RESMS TESTMNY. EXHB MRK. WITNS CALLED, SWRN & TSFD. TRIAL CONTS TO 4/26/89 AT 8:00AM. FG.) (JUDGE KENYON) (Dkt'd 06/01/89).

Bench trial continued to 04/26/89 @ 8:00 AM (CONT TO 7TH B/T. FG.) (JUDGE KENYON) (Dkt'd 06/01/89).

04/26/89 184 Trial held-bench (Counts 1-11) (C/T 7TH DAY. WITN CALLED, SWRN & TESTFD. EXHB MRKD. TRIAL CONT TO 4/27/89 AT 8:00AM. FG.) (JUDGE KENYON) (Dkt'd 06/01/89).

Bench trial continued to 04/27/89 @ 8:00 AM (CONT TO 8TH B/T. FG.) (JUDGE KENYON) (Dkt'd 06/01/89).

185 Motion filed (MOT #40) (FLD DEFT X-CITEMENT VIDEO INC'S MOTN FOR JDGMT OF ACQ PURS TO R-29, RULES OF CRMNL PROC & MEMO IN SUPPORT. FG.) (Dkt'd 06/01/89).

04/27/89 186 Trial held-bench (Counts 1-11) (C/T 9TH DAY. CRT TAKES DEFT'S MOTN FOR JDMGT OF ACQ UNDER SUBMSN. DEFT OBJECTS TO PLTF'S EXHB 15-18. CRT TAKES MATTER UNDER SUBMS. EXHB ADMTD. GOVT REST. DEFNSE GIVES OPENG STMTS. WITNS CALLED SWRN & TESFTD. TRIAL CONT TO 4/28/89 AT 8:00AM. FG.) (JUDGE KENYON) (Dkt'd 06/01/89).

Bench trial continued to 04/28/89 @ 8:00 AM (CONT TO 10TH B/T. FG.) (JUDGE KENYON) (Dkt'd 06/01/89).

187 – FLD GOVT'S RESPNSE TO DEFTS' MOTN FOR JDGMT OF ACQ. FG. (Dkt'd 06/01/89).

04/28/89 188 Trial held-bench (Counts 1-11) (C/T 10TH DAY. WITNS CALLED, SWRN & TESTFD. EXHB MRKD. CRT HEARS ARG RE EXPERT TEST-MNY. CRT HEARS EXPERT TEST-MNY & REVWS VIDEO TAPES. TRIAL CONT TO 5/1/89 AT 8:00AM. FG.) (JUDGE KENYON) (Dkt'd 06/01/89).

Bench trial continued to 05/01/89 @ 8:00 AM (CONT TO 11TH B/T. FG.) (JUDGE KENYON) (Dkt'd 06/01/89).

05/01/89	189	Trial held-bench (Counts 1-11) (C/T 10TH DAY. CRT HERS ARG RE MOTN FOR JDGMT OF ACQ. CRT TAKES MOTN UNDER SUBMS. CRT CONTS TRIAL TO 5/3/89 AT 7:30AM. FG.) (JUDGE KENYON) (Dkt'd 06/01/89).
		Bench trial continued to 05/03/89 @ 7:30 AM (CONT TO 11TH B/T. FG.) (JUDGE KENYON) (Dkt'd 06/01/89).
05/03/89	190	Trial held-bench (Counts 1-11) (C/T 11TH DAY. CRT GRANDS DISM AS TO CNTS 1-8 OF INDICT. CRT DENIES DISM AS TO CNTS 9, 10, & 11. WITNS CALLED, SWRN & TSTFD. DEFT REST. GOVT RECALLS WITNS. CRT HEARS CLOSING ARG. CRT CONTS MATTER FOR RULING RE CNTS 9, 10 & 11. TO 5/23/89 AT 2:00PM. BRIEFS TO BE FLD W/IN 10 DAYS & RESPNSE W/IN 5 DAYS. FG.) (JUDGE KENYON) (Dkt'd 06/01/89).
		Dismissed on court's motion (Counts 1-8) (CRT GRANTS DISM AS TO CNTS 1-8 OF INDICT. FG.) (JUDGE KENYON) (Dkt'd 06/01/89).
		Bench trial continued to 05/23/89 @ 2:00 PM (CONT TO 12TH B/T. FG.) (JUDGE KENYON) (Dkt'd 06/01/89).
05/10/89	191	Status hearing held (IN CHMBRS. W/ RESPECT TO ADMSN OF CERTIFIED COPIES OF COPYRIGHT REGIST CRT FINDS W/OUT SHOWING THAT CERFD COPIES OF COPYRIGHT REFER SPEC TO ACTUAL TAPES BEFR CRT, SUCH EVID. IS INADMISSIBLE. FG.) (JUDGE KENYON) (Dkt'd 06/01/89).
05/15/89	192	–FLD DEFT RUBIN GOTTESMAN'S BRIEF IN SUPP OF MOTN FOR JDGMT OF ACQ, OR IN ALTN, MOTN TO DISM INDICT. FG. (Dkt'd 06/01/89).
	193	–FLD DEFT RUBIN GOTTESMNA'S BRIEF IN SUPP OF MOTN FOR JDGMT OF ACQ, OR IN ALTN MOTN TO DISM INDICT. FG. (Dkt'd 06/01/89).
	194	Motion for judgment of acquittal filed (MOT #41) (Counts 9-11) (FLD MOTN FOR JDGMT OF ACQ ON CNTS 9, 10, 11. FG.) (Dkt'd 06/01/89).
05/16/89	195	–FLD PROP FINDINGS OF FACT RE CNTS 9, 10, 11. ERRATA SHEET. FG. (Dkt'd 06/01/89).
05/18/89	196	Notice filed (FLD GOVT'S NOTC OF INTENTION TO RE-OPEN IT'S CASE IN CHIEF. FG.) (Dkt'd 06/01/89).
	197	–FLD GOVT'S APPLC FOR EXTENSION OF TI TO FILE RESPONSES. HRG DATE 5/23/89 AT 1:30PM. FG. (Dkt'd 06/01/89).
05/23/89	198	Status hearing held (CRT CONTS HEARING FOR JDGMT OF ACQ TO 6/15/89 AT 2:00PM. FG.) (JUDGE KENYON) (Dkt'd 06/01/89).

		Status hearing set for 06/15/89 @ 2:00 PM (JUDGE KENYON) (Dkt'd 06/01/89).
05/24/89	199	–FLD RECPT FOR REPORTER'S TRNSCRPT. FG. (Dkt'd 06/01/89).
	200	Filed transcript of proceedings for 05/03/89 (FLD TRNSCPRT OF PROC. FG.) (Dkt'd 06/01/89).
	201	Order filed (FLD ORD GRANTING GOVT'S APPLC FOR EXTN OF TI TO FILE ITS RESPNSES. FG.) (JUDGE KENYON) (Dkt'd 06/01/89).
06/02/89	204	–FLD GOVT'S PROP FINDINGS OF FACT RE OBSCENITY. FG. (Dkt'd 06/06/89).
06/13/89	207	–FLD GOVT'S EX-PARTE MOTN TO CONT TRIAL & DECLR OF DREW S PITT. DATE: 6/15/89 AT 2:00PM. LODGED ORD. FG. (Dkt'd 06/15/89).
06/15/89	208	Trial held-bench (Counts 9-11) (B/T 12TH DAY. GOVT ORAL MOTN FOR CONT DENIED. CT ALLOWS GOVT TO REOPEN CASE FOR LTD PURP OF COPYRIGHT EVID AS WAS CONTIGENT TO GOVT RESTG EARLIER. WITNS CST. EXHS ID & ADMIT. GOVT RESTS. CT MAKES FINDGS. CRT FINDS DEFTS RUBIN GOTTESMAN/R.G SALES CO, & X-CITEMENT VIDEO INCE. GUILTY AS CHRGD IN CNTS 9, 10, & 11. CRT ORD SENT FOR

		8/7/89 AT 2:00PM. CRT ORD CNSL & DEFTS PRES FOR SENT. FG.) (JUDGE KENYON) (Dkt'd 07/06/89).
		Trial ends-bench (Counts 9-11) (JUDGE KENYON) (Dkt'd 07/06/89).
		Court judgment of guilty (Counts 9-11) (JUDGE KENYON) (Dkt'd 07/06/89).
		Order cause referred to the probation department for a pre-sentence investigation (Counts 9-11) (JUDGE KENYON) (Dkt'd 07/06/89).
		Sentencing set for 08/07/90 @ 2:00 PM (Counts 9-11) (JUDGE KENYON) (Dkt'd 07/06/89).
	214	–FLD LIST OF EXHBS & WITNS. FG. (Dkt'd 08/17/89).
06/30/89	209	–FLD DEFT GOTTESMAN'S REQ TO TRVL TO HOUSTN, TX ON 7/15-7/17/89 & TRIP TO LAS VEGAS, NV ON 8/5-9/89 TO ATTEND CONVENTION. FG. (Dkt'd 07/14/89).
		Order conditions of bond modified (DEFT'S REQ TO TRVL TO HOUSTON, TX & LAS VEGAS, NV IS GRANTED. FG.) (JUDGE KENYON) (Dkt'd 07/14/89).
	210	–FLD DEFT GOTTESMAN'S MOTN TO CONT SENT DATE TO 8/21/89 @ 2:00PM. FG. (Dkt'd 07/14/89).
		Order filed (DEFT'S REQ GRANTED TO CONT SENT DATE TO 8/21/89 AT 2:00PM. FG.) (JUDGE KENYON) (Dkt'd 07/14/89).

		Sentencing continued to 08/21/89 @ 2:00 PM (Counts 9-11) (JUDGE KENYON) (Dkt'd 07/14/89).
07/24/89	213	Status hearing held (PER REQ OF PO, SENT IS CONT TO 9/25/89 AT 1:30PM. IF CNSL HAS ANY OBJCT TO CONT PLEASE CONTACT CRT. FG.) (JUDGE KENYON) (Dkt'd 08/09/89).
		Sentencing continued to 09/25/89 @ 1:30 PM (Counts 9-11) (JUDGE KENYON) (Dkt'd 08/09/89).
08/21/89	215	Order conditions of bond modified (DFT FLD REQUEST FOR PERMITTION TO TRVL AND ORD, IT IS ORD THAT THE DFT MAY TRVL. SM) (Dkt'd 08/25/89).
08/28/89	216	–FLD RECEIPT FOR REPORTER'S TRANSCRIPT DATE OF HRG 6/15/89. SM (Dkt'd 08/31/89).
	217	Filed transcript of proceedings for 06/15/89 (Dkt'd 08/31/89).
09/20/89	219	Order filed (FLD FINDINGS OF FACT & CONC OF LAW RE CTS 9, 10-11. TO THE EXTENT THAT THE PRECEDING CONC OF LAW MAY BE DEEMED TO BE FINDINGS OF FACT, THEY ARE HEREBY INCORP BY REFERENCE INTO THE FINDINGS OF FACT. KKG) (JUDGE KENYON) (Dkt'd 09/25/89).
09/25/89	220	Sentencing continued to 10/23/89 @ 1:30 PM (Counts 9-11) (DFTS REQUEST. KKG) (JUDGE KENYON) (Dkt'd 09/26/89).

10/23/89		Attorney SCHWARTZ, ARTHUR deleted from case (FLD SUB OF CNSL. KKG) (JUDGE KENYON) (Dkt'd 10/27/89).
		Attorney FLEISHMAN, STANLEY added to case (JUDGE KENYON) (Dkt'd 10/27/89).
	222	Filed substitution of FLEISHMAN, STANLEY as attorney for defendant (JUDGE KENYON) (Dkt'd 10/27/89).
	223	Sentencing of defendant (Counts 9-11) (DFT COMM TO THE CUST OF THE BOP FOR 12 MOS AS TO CT 9, CT 10-11 IMPOS OF SENT IS SUSP, DFT IS PLC ON 3 YRS PROB AS TO CT 10 & 11, TO RUN CONC, UPON REL FR IMPRI ON THE FOLWNG COND (1) OBEY R&R OF PO & GO 225, (2) OBEY ALL FED, STS & LOC LAWS (3) RPT TO PO W/I 72 HRS AFTER REL (4) POSS NO FIREARMS (5) NOT ILLEG POSS ANY CONT SUBS (6) SHALL PART AS INST BY PO, IN A PRGRAM APPROV BY THE PO FOR TRTMNT OF DRUG & ALC ABUSE (7) SHALL NOT PROD, DIST, HANDLE, PROMOTE ANY FILS VIDEOS REC OR ANY COMPO THEREOF WH MAY INC CHILD PORN. DFT SHALL SURR 11-27-89 @ 12 NOON TO DES FAC OR INST OR USM. DFT IS ADV OF HIS RIGHT TO APPEAL. CRT REQ CNSL SUB A MTN FOR BAIL ON

APPEAL. GVT MOVES TO DISM ALL REMNG CTS. THE BND IN EX-ON UPON SURR. KKG) (JUDGE KENYON) (Dkt'd 10/30/89).

223 Bond exonerated upon surrender (DFT TO SURR ON 11-27-89 @ 12 NOON. KKG) (JUDGE KENYON) (Dkt'd 10/30/89).

10/25/89 227 Filed notice of appeal (Counts 9-11) (APPL #2) (FLD DFT GOTTESMAN NOTC OF APPEAL TO THE 9TH CIR C/A FRM J/M ENT 10-23-89, BILLED & FRMS GVN. KKG) (JUDGE KENYON) (Dkt'd 10/31/89).

10/26/89 224 Issued judgment and commitment to U.S. Marshal (Counts 9-11) (J/M ENT 10-30-89. KKG) (JUDGE KENYON) (Dkt'd 10/30/89).

228 Motion for bail pending appeal filed (MOT #43) (FLD MTN FOR BAIL PNDING APPEAL & STAY: MEMO IN SUPPORT DECLARATIONS OF RUBIN GOTTESMAN & STANLEY FLEISHMAN IN SUPPORT. KKG) (Dkt'd 10/31/89).

11/06/89 229 –(APPL #2) (FLD FRM 9TH CIR ORD FOR TIME SCHED. DATE TRANSC ORD FRM THE CRT RE-PTR 11-21-89. THE CRTS REPTRS TRANSC WILL BE FLD IN THE DIST CRT 12-21-89. APPELLANTS OPENNING BRIEF AND EXCERPTS OF RECORD WILL BE SVD AND

FLD 1-30-90. THE BRIEF OF AP-PELLEE WILL BE SVD AND FLD 3-1-90. HE OPTIONAL REPLY BRIEF OF APPELLANT WILL BE SVD AND FLD 3-15-90. RJ) (JUDGE KENYON) (Dkt'd 11/07/89).

11/09/89 230 –(APPL #2) (FLD 9TH CIR TI SCH-ED: TRANSC WILL BE ORD FR THE CRT RPTER 11-21-89, CRT RPTER'S TRANSC WILL BE FLD 12-21-89, AP-PELLANT'S OPENING BRIEF & EX-CERPTS OF RC WILL BE SERVED & FLD 1-30-89, APPELLEE WILL BE SERVED & FLD 3-1-90 & THE OPT REPLY BRIEF OF APPELLANT WILL BE SERVED & FLD 3-15-90. KKG) (Dkt'd 11/20/89).

231 Motion for bail pending appeal filed (MOT #44) (FLD AMENDED NOTC OF HEARING RE: BAIL. KKG) (Dkt'd 11/20/89).

231 Motion for bail pending appeal hearing set for 11/20/89 @ 2:00 PM (MOT #44) (JUDGE KENYON) (Dkt'd 11/20/89).

11/13/89 234 –(APPL #2) (FLD TRANSC DESIGN ND ORD FORM HRG DATE 4-12-89. RJ) (JUDGE KENYON) (Dkt'd 12/07/89).

11/15/89 232 Filed memorandum in opposition to motion for bail pending appeal (MOT #44) (Dkt'd 11/20/89).

11/17/89 235 Reply to answer to motion for bail pending appeal (MOT #43) (FLD DFT

GOTTESMAN RESPONT GOVTS OPPOS TO MOTN FOR BAIL PENDING APPEAL. RJ) (JUDGE KENYON) (Dkt'd 12/11/89).

11/20/89 233 Motion for bail pending appeal hearing held (MOT #44) (CRT GRANTS BAIL PENDING APPEAL. PRESENT BND SHALL REMAIN AS BND ON APPEAL. RJ) (JUDGE KENYON) (Dkt'd 12/06/89).

233 Motion for bail pending appeal granted (MOT #44) (CRT GRANTS BAIL PENDING APPEAL. PRESENT BND SHALL REMAIN AS BND ON APPEAL. RJ) (JUDGE KENYON) (Dkt'd 12/07/89).

233 Bail to stand as bail on appeal (CRT GRANCRT GRANTS BAIL PENDING APPEAL PRESENT BND SHALL REMAIN AS BND ON APPEAL. RJ) (JUDGE KENYON) (Dkt'd 12/07/89).

12/15/89 236 Bond exonerated (Dkt'd 12/15/89).

12/27/89 237 —FLD EX PARTE APPLIC FOR PERMISSION TO LE THE DIST TO ATTEND CONSUMER ELECTRONICS CONVETION. RJ (JUDGE KENYON) (Dkt'd 01/05/90).

03/01/90 239 —(APPL #2) (LODGED ORD FRM THE 9TH CIR APPEALS. CRT REPTR ROBERT L. CIPOLLONI'S MOT FOR AN EXTN OF TIME TO FILE THE TRANSC IS GRANTED. THE

TRANSC IS DUE 3-1-90. THE BRIEF SCHED IS AS FOLLOWS: APPELLANTS OPENING BRIEF AND EXCERPTS OF RECROD SHALL BE DUE 4-10-90, APPELLEES BRIEF IS DUE 5-10-90, AND THE OPTIONAL REPLY BREIF SHALL BE DUE 5-24-90. RJ) (JUDGE KENYON) (Dkt'd 03/16/90).

240 Motion filed (MOT #45) (FLD MOT, PURS TO NINTH CIR ORD, TO REOPEN PROCEEDINGS FOR RECONSIDERATION IN LIGHT OF INTERVENING CIR CRT DECISION AND MEMO IN SUPPT. RJ DATE OF HRG 3-26-90 AT 1:30 P.M.) (JUDGE KENYON) (Dkt'd 03/16/90).

241 Motion for bail pending appeal filed (MOT #46) (FLD MOT TO MODIFY BAIL TO REL PROPERTY WHICH PRESENTLY SECURES BAIL PENDING APPEAL. DATE OF RG 3-26-90 AT 1:30 P.M. RJ) (JUDGE KENYON) (Dkt'd 03/16/90).

03/16/90 242 Filed memorandum in opposition to motion (MOT #45) (FLD GOVTS OPOS TO DFT GOTTESMANS MOT TO REOPEN PROCEEDINGS FOR RECONSIDERATION IN LIGHT OF A RECENT NINTH CIR OPINION MEMO OF P/A. DATE OF HRG 3-26-90 AT 1:30 P.M. RJ) (JUDGE KENYON) (Dkt'd 03/29/90).

03/21/90	246	—(APPL #2) (LODGED ORD FRM 9TH CIR APPEAL APPELLANTS MOT TO SAY BRIEFING IS GRANTED. ON OR BEFORE 4-2-90, RJ) (JUDGE KENYON) (Dkt'd 04/05/90).
03/22/90	243	Filed reply to answer to motion (MOT #45) (FLD DFTS REPLY TO GOVTS OPPOS TO DFT GOTTESMANS MOT TO REOPEN PROCEEDINGS. DATE OF HRG 3-26-90 AT 1:30 P.M. RJ) (JUDGE KENYON) (Dkt'd 03/29/90).
03/26/90	244	Status hearing held (CRT GRANTS DFTS MOT TO MOD BAIL CRT HEARS ARGUMENT OF CNSL CRT TAKES DFTS MOT TO REOPEN PROCEEDINGS UNDER SUBMISSION. RJ) (JUDGE KENYON) (Dkt'd 03/30/90).
		Motion for bail pending appeal granted (MOT #46) (JUDGE KENYON) (Dkt'd 03/30/90).
	245	Order conditions of bond modified (IT IS ORD BAIL PENDING APPEAL SHALL CONSIST OF THE SUM OF 17,500, WHICH SUM IS NOW HELD BY THE CLK OF THE CERT. THE CLK OF THE CRT IS ORD TO SIGN THE REQUEST FOR FULL RECONVEYANCE SET FORT AT THE END OF THE DEED OF TRUST EXECUTED BY RUBIN GOTTESMAN AND BARBARA GOTTESMAN ON 5-9-88 AND DELIVER SAID REQUEST FOR FULL RECONVEYANCE TO DFT RUBIN GOTTESMAN TOGETHER W/THE ORIG DEED OF TRUST AND NOTE IN THE SUM OF 175,000 MADE PAYABLE TO THE CLK, U.S. DIST CRT CD. RJ PULLED DEED OF TRUST AND SENT PAPER WORK TO ADMIN. RJ) (JUDGE KENYON) (Dkt'd 03/30/90).
03/30/90	255	Bond (RCVD RECEIPT FOR CERT MAIL SIGNED AND RETND. PROPERTY ADDRESS 7116 DECEIS PLACE, VAN NUYS. PROPERTY OWNER RUBIN GOTTESMA AND BARBARA GOTTESMAN. RJ) (Dkt'd 05/30/90).
04/02/90	247	Status hearing held (PURS TO DFTS MT TO REOPEN PROCEEDINGS, THE CRT REQUESTS BRIEFING ON THE ISSUE OF WHETHER 18:2252 IS CONSTITUTIONAL IN LIGHT OF U.S. V. THOMAS, NO. 88-5325, SLIP OP. 299 (9TH CIR JAN. 10, 1990) AND IN PARTICULAR, WHETHER THE STATUTE IS CONSTITIONAL AS APPLIED BY THIS CRT TO DFTS. THE CRT FEELS THAT NO HRG IS REQUIRED. THE EXPECTS TO RULE ON THE PAPERS. SUCH PAPERS SHOULD BE FLD NLT 4-23-90. RJ) (JUDGE KENYON) (Dkt'd 04/05/90).

04/09/90	251	Order filed (IT IS ORD THAT RUBIN GOTTESMAN MAY TRAVEL TO TEXAS FRM 4-14-90 TO 4-16-90. RJ) (JUDGE KENYON) (Dkt'd 05/10/90).
		Bond (IT IS ORD THAT RUBIN GOTTESMAN MAY TRAVEL TO TEXAS FRM 4-14-90 AT 4-16-90. RJ) (JUDGE KENYON) (Dkt'd 05/10/90).
	252	–FLD DFT GOTTESMANS EX PARTE APPLIC FOR LE TO TRAVEL. LODGE ORD. RJ (JUDGE KENYON) (Dkt'd 05/10/90).
04/10/90	253	–LODGED ORD FRM 9TH CIR APPEAL. CRT REPTR ROBERT CIPOLLONIS MOTN FOR A EXTN OF TI TO FILE THE TRANS IS GRANTED. THE TRANSC IS DUE 4-30-90. A NEW BRIEFING SCHED WILL BE ESTABLISHED, IF APPROPRIATE, UPON THE CRTS ACTN OR APPELLANTS RESPONSE TO THE 3-14-90. RJ (JUDGE KENYON) (Dkt'd 05/10/90).
04/11/90	248	–FLD DFTS MEMO PURS TO CRT ORD DATED 4-2-90 ORAL ARUGMENT REQUESTED. RJ (JUDGE KENYON) (Dkt'd 04/20/90).
04/23/90	254	–FLD GOVTS MEMO PURS TO CRT ORD DATED 4-2-90. RJ (JUDGE KENYON) (Dkt'd 05/10/90).
04/30/90	249	Status hearing held (FILING AND SPREADING MANDATE OF THE NINTH CIR CRT OF APPEALS IN

		CHAMBERS THE CRT ORDS THAT THE MANDATE OF THE 9TH CIR CRT OF APPEAL LIMITED REMANDING. ENT 5-9-90. RJ) (JUDGE KENYON) (Dkt'd 05/09/90).
	250	Filed true copy of order of U.S.C.A. that the appeal (APPL #2) be granted and action remanded to District Court for further proceedings. (FLD ORD FRM 9TH CIR APPEAL. APPELLANTS RENEWED MOTN FOR A LIMITED REMAND IS GRATED. THIS CASE IS REMANDED TO THE DIST COURT FOR THE LIMITED PURPOSE OF ENABLING THAT CRT TO ENTERTAIN A MOTN TO REOPEN PROCEEDINGS. THE PARTIES SHALL SUBMIT A JOINT STATUS REPT WITHIN 45 DAYS OF THE DATE OF THIS ORD. ENT 5-9-90 RJ) (JUDGE KENYON) (Dkt'd 05/09/90).
06/29/90	257	Order filed (FLD ORD RE CONSTITUTIONALITY OF 18:2252. SM) (JUDGE KENYON) (Dkt'd 07/06/90).
07/05/90	258	Order filed (LODGED ORD FRM USCCA, THIS CRT HAS RECEIVED AND REVIEWED APPELLANT'S STATUS REPORT. THIS APPEALS IS STYD FOR 60 DAYS. THE PARTIES SHALL SUBMIT A SECND JOINT STATUS REPORT W/IN 60 DAYS OF THIS ORD. SM) (Dkt'd 07/06/90).

07/25/90	259	–FLD EX PARTE APPLIC FOR PERMISSION TO LEAVE THE DIST TO ATTEND VIDEO SOFT WEAR DEALERS ASSOC SHOW. LODGED ORD. RJ (JUDGE KENYON) (Dkt'd 08/02/90).
07/31/90	260	–FLD DECLAR OF STANLEY FLEISHMAN IN SUPPT OF EX PARTE APPLIC FOR ORD FOR PERMISSION TO LE THE DIST. RJ (Dkt'd 08/02/90).
08/01/90	261	Order conditions of bond modified (IT IS ORD THAT DFT RUBIN GOTTESMAN MAY LE THE DIST FOR THE PEIROD 8-4-90 THROUGH 8-7-90. RJ) (JUDGE KENYON) (Dkt'd 08/09/90).
08/03/90	262	–LODGED ORD FRM 9TH CIR CRT OF APPEAL. ON 6-11-90 THIS CRT GRANTD CRT REPTR ROBERT L. CIPOLLONI'S THIRD MOTN FOR AN EXTNOF TIME UNTIL 6-20-90, TO FILE THE TRANSC. THE CRT FUR DIRECTED APPELLANTS TO INFORM THIS CRT BY LTR AS TO WHETHER THE CRT REPTR COMPLIED WITH THE ORD. ON 7-9-90, THE CRT RECVD APPELLANTS REPT. THE REPT STATES ONLY THAT APPELLANTS HAVE NOT YE RECVD THEIR CPY OF THE TRANSC THE CRT ASSUMES THAT THE REPTR HAS NOT COMPLETED OR FILED THE TRANSC. RJ (Dkt'd 08/09/90).

08/17/90	263	–FLD EX PARTE APPLIC FOR PERMISSION TOLE THE DIST FOR ONE DAY FOR A BUSINESS MEETING IN LAS VEGAS, NEVADA AND DECLAR OF STANLEY FLEISHMAN IN SUPPORT. LODGED ORD. RJ (JUDGE KENYON) (Dkt'd 08/30/90).
08/20/90	264	Order conditions of bond modified (ITIS ORD THAT DF RUBIN GOTTESMAN MAY LE THE DIST FOR THE PERIOD 8-25,26 TO ATTEND BUSINESS IN LAS VEGAS, NEVADA. RJ) (JUDGE KENYON) (Dkt'd 08/30/90).
10/01/90	265	–FLD RECEIPT FOR REPTRS TRANSC DATE OF HRG. 4-12-89. RJ (JUDGE KENYON) (Dkt'd 10/16/90).
12/17/90	266	–FLD EX PARTE APPLIC FOR PERMISSION TO LE THE DISTRICT FOR A BUSINESS MEETING IN LAS VEGAS, NEVADA AND DECLAR OF STANTLEY FLEISHMAN IN SUPPORT. LODGED ORD. RJ (JUDGE KENYON) (Dkt'd 01/08/91).
12/27/90	267	Bond (AS OF 2-5-91 WE ARE UNABLE TO PROVIDE INFORMATION AS TO THE ABOVE DFT. SPOKE WITH PAUL LEVFEBVRE FRM BOP ON 2-5-91. RJ) (Dkt'd 02/20/91).
	268	Order conditions of bond modified (FLD ORD GRANTING PERM TO LEAVE THE DISTRICT JANUARY

		9-14, 1991. KKG) (JUDGE KENYON) (Dkt'd 02/08/91).
04/05/91	269	–FLD RECEIPT FOR REPTRS TRANSC DATE OF HRG 4-17-89, 4-19-89. RJ (JUDGE KENYON) (Dkt'd 05/03/91).
04/25/91	270	–FLD RECEIPT FOR REPTRS TRANSC DATE OF HRG 4-13-89. RJ (JUDGE KENYON) (Dkt'd 05/03/91).
05/10/91	271	–LODGED ORD FRM 9TH CIR CRT OF APPEALS. THE CRT REPTR ROBERT CIPOLLONI'S MOTN FOR AN EXTN OF TI TO FILE THE TRANSC IS GRANTED. THE TRANS IS DUE 5-15-91. NO FUR EXTN OF TI TO FILE THE TRANS WILL BE GRANTED. RJ (JUDGE KENYON) (Dkt'd 05/20/91).
05/28/91	273	–FLD EX PARTE APPLIC FOR PERMISSION TO ATTEND TRADE CONVENTION AND BUSINESS AFFAIRS DECLAR OF STANLEY FLEISHMAN IN SUPPORT. LODGED ORD. RJ (JUDGE KENYON) (Dkt'd 06/07/91).
05/29/91	274	Order filed (IT IS ORD THAT RUBING GOTTESMAN MAY LE THE DIST ON 6-12-91 TO ATTEND BUSINESS IN ALBUQUERQUE, NEW MEXICO AND MAY LE THE DIST FRM 7-12-91 TO 7-15-91 TO ATTEND THE CONSUMER ELECTRONICS SHOW IN LAS VEGAS, NEVADA. RJ) (JUDGE KENYON) (Dkt'd 06/07/91).

		Bond (IT IS ORD THAT RUBIN GOTTESMAN MAY LE THE DIST ON 6-12-91 TO ATTEND BUSINESS IN ALBUQUERQUE, NEW MEXICO AND MAY LE THE DIST FRM 7-12 TO 7-15-91 TO ATTEND THE CONSUMER ELECTRONICS SHOW IN LAS VEGAS, NEVADA. RJ) (JUDGE KENYON) (Dkt'd 06/07/91).
11/01/91		Payment, $100.00 (REC'D THE SUM OF 100.00 FOR ROBERT CIPOLLONI FOR SANC ORD DTD 6-7-91. KR) (Dkt'd 11/19/91).
	225	Dismissed on government's motion (Counts 9, 10, 11) (CTS SHOULD HV BEEN DISM AT THE TI OF SENT WH WAS HELD ON 1-23-89. KKG) (JUDGE KENYON) (Dkt'd 01/27/92).
4/9/92	–	BASE TRANSFERRED FROM DEC-10, refer to criminal microfiche for previous docket entries (mr) [Entry date 08/05/92]
4/10/92	280	FlD EX PARTE Applic by dft Rubin Gottesman for an ord perm dft to leave dist from 5/3/92 to 5/25/92, decl of Rubin Gottesman to leave dist from 5/3/92 to 5/25/92, decl of Rubin Gottesman and Stanley Fleishman (mr) [Entry date 08/05/92]
4/15/92	281	Fld ORDER by Judge David V. Kenyon: modifying conditions of release as to Rubin Gottesman. Appellant Rubin Gottesman may leave dist from 5/3 to

		5/25/92 to attend Cannes Int'l Film Festival in Europe. Clk of Crt is ord to deliver Rubin Gottesman his passport by delivering the sme to his atty Stanley Fleishman or to Mr. Gottesman. Passport must be picked up by either of them at the Crthouse. Rubin Gottesman is ord to retn to L.A., CA nlt 5/25/92. Rubin Gottesman is ord to deliv his passport to clk of crt on or bf 6/1/92. (mc) [Entry date 08/05/92]
4/21/92	282	Fld NOTICE of deliv of passport to Rubin Gottesman on 4/21/92 (mc) [Entry date 08/05/92]
6/1/92	283	Fld NOTICE as to dft Rubin Gottesman of deliv of passport back to crt. Passport no. 031392190. Sent to clk (mc) [Entry date 08/05/92]
6/25/92	284	Fld letter from U.S. Dept of State re lockout ord as to Rubin Gottesman passport services. (mc) [Entry date 08/05/92]

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Docket No. 89-50562

UNITED STATES OF AMERICA, APPELLEE

v.

RUBIN GOTTESMAN, DEFENDANT-APPELLANT

DOCKET ENTRIES

11/13/89	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. Filed in D.C. on 11/9/89; (RT required: y) (Sentence imp 12 months) [89-50562] transcript shall be ordered by 11/21/89 for Rubin Gottesman; Fee payment due 11/27/89; transcript shall be filed by 12/21/89; appellants' briefs, excerpts due by 1/30/90 for Rubin Gottesman; appellees' brief due 3/1/90 for USA; appellants' reply brief due by 3/15/90 for Rubin Gottesman. (kn) [89-50562]
1/31/90	Filed Appellant X-Citement Video & Rubin Gottesman's motion to consolidate cases 89-50556 & 89-50562 and to extend time to file appellant's opening brief. (1/30) (CRIMATT) [89-50556, 89-50562] [1711315] [89-50556, 89-50562] (jlc) [89-50556 89-50562]
1/31/90	Filed Appellant X-Citement Video & Rubin Gottesman's motion to remand case to lower court for reconsideration in light of intervening circuit court decision. (1/30) (CRIMATT) [89-50556, 89-50562] [1711315] [89-50556, 89-50562] (jlc) [89-50556 89-50562]

2/1/90 Received notification from District Court of payment of docket fee (date paid: 1/31/90) [89-50562] (jhc) [89-50562]

2/6/90 Filed ct rpt Robert L. Cipolloni mtn for ext of time until 3/1/90 in which to file rt [1719396] (PROMO) [89-50562] (rc) [89-50562]

2/21/90 Filed order (SCHROEDER, FERNANDEZ) appellant's motion for a limited remand is denied without prejudice to its renewal following an an indication that the DC is willing to reopen proceedings. Aplt's motion to consolidate appeal nos. 89-50556 & 89-50562 is granted. [89-50556, 89-50562] (jlc) [89-50556 89-50562]

2/22/90 Filed order (Deputy Clerk: cb) Ct Rpt Robert L. Cipollon's mtn for an ext of time to file the transcript is granted. The transcript is due 3/1/90. This order does not waive the mandatory fee reduction for any portion of the transcripts delivered late. See Report of the Proceedings of the Judicial Conference of the US, March 1982, page 10. The briefing schedule is as follows: aplts' opening brief(s) and excerpts of record shall be due 4/10/90, aple's brief is due 5/10/90, and the optional reply brief(s) shall be due 5/24/90. This order is subject . . . [89-50556, 89-50562] (rc) [89-50556 89-50562]

3/14/90 Filed motion of Appellants to reconsider briefing schedule and deputy clerk order: (Deputy Clerk: cb) aplts' motion to stay briefing schedule is granted. On or before 4/2/90, aplts shall submit their renewed motion for limited remand or shall submit a report on the status of their request to the DC. A new schedule will

be established, if appropriate, upon the court's review of aplts' response to this order. (Motion recvd 3/5) [89-50556, 89-50562] (jlc) [89-50556 89-50562]

4/3/90 Filed motion of extend time to file Reporter's Transcript and deputy clerk order: (Deputy Clerk: cb) Ct. Rptr. Robert Cipolloni's motion for an ext. of time to file the transc. is granted. The transc. is due 4/30/90. This order does not waive the mandatory fee reduction for any portion of the transc. delivered late. A new briefing schedule will be established if appropriate, upon the court's action or aplt's response to the 3/14/90 order. in 89-50556, (Motion recvd 3/27) [89-50556, 89-50562] (jlc) [89-50556 89-50562]

4/9/90 Filed Appellant X-Citement Video in 89-50556, Appellant Rubin Gottesman in 89-50562's motion to remand case to lower court for reconsideration in light of intervening circuit court decision. (4/5) (CRIMATT) [89-50556, 89-50562] [1741120] [89-50556, 89-50562] (jlc) [89-50556 89-50562]

4/19/90 Filed order (BROWNING, BRUNETTI,): aplts' renewed mtn for a limited remand is granted. This case is remanded to the dc for the limited purpose of enabling that court to entertain a mtn to reopen proceedings. The parties shall submit a joint status report within 45 days of the date of this order. [89-50556, 89-50562] (dmd) [89-50556 89-50562]

4/19/90 Filed order (BROWNING, BRUNETTI,): aplts' renewed mtn for a limited remand is granted. This case is remanded to the dc for

the limited purpose of enabling that court to entertain a mtn to reopen proceedings. The parties shall submit a joint status report within 45 days of the date of this order. [89-50556, 89-50562] (dmd) [89-50556 89-50562]

6/8/90 Filed aplts' amended status report (pursuant to 4/19/90 order) (CRIMATT), served on 6/5/90. [89-50562, 89-50556] (rc) [89-50556 89-50562]

6/8/90 Filed aplts' status report (pursuant to 4/19/90 order) (CRIMATT), served on 6/5/90. [89-50562, 89-50556] (rc) [89-50556 89-50562]

6/11/90 Filed motion of extend time to file Reporter's Transcript and deputy clerk order: (Deputy Clerk: mlm) Ct. Rptr. Robert L. Cipolloni's 3rd motion for an ext. of time to file the transc. is granted. The transc. is due 6/29/90. Aplt shall inform this court by letter as to whether the rptr. complies with this order in a timely fashion. This order does not waive the mandatory fee reduction for any portion of the transc. delivered late. in 89-50562 (Motion recvd 5/30) [89-50556, 89-50562] (jlc) [89-50556 89-50562]

6/27/90 Filed order (CANBY, WIGGINS): this court has received & reviewed aplt's status report. This appeal is stayed for 60 days. The parties shall submit a second joint status report within 60 days of this order. [89-50556, 89-50562] (jlc) [89-50556 89-50562]

7/9/90 Filed aplt's response to 6/11/90 order re: reporter's transcript not yet recvd. (work in progress—Promo) [89-50562, 89-50556] (dmd) [89-50556 89-50562]

7/30/90 Filed order (Deputy Clerk: HW) pm 6/11/90, this court granted Ct. Rptr. Robert L. Cipolloni's third motion for an ext. of time until 6/29/90, to file the transc. The court further directed aplts to inform this court by letter as to whether the ct. rptr. complied with the order. On 7/9/90. the court received aplts' report. The report states only that aplts have not yet received their copy of the transc.; the court assumes that the rptr. has not completed or filed the transc. Within 14 days from the entry of this order, Ct. Rptr Cipolloni shall (1) file the transc. or (2) move for an ext. of time to do so. Aplt shall inform this court by letter whether the original transc. have been filed with the DC. Aplts are reminded that pursuant to FRAP 25(d), all papers presented for filing in this court must be accompanied by proof of service on all parties. This order shall be provided to the rptr. at the DC; copies of this order shall be provided to the DC clerk and the ct. rptr. supervisor. [89-50556, 89-50562] (jlc) [89-50556 89-50562]

8/27/90 Received Appellant X-Citement Video in 89-50556 letter dated 8/17 re: "no record of filing of transcripts . . ." (no action necessary per PROMO) [89-50556, 89-50562] (jlc) [89-50556 89-50562]

8/31/90 Filed ct. rptr. mtn & order (Dpty clk-ra) Ct. Rptr. Robert Cipolloni's mtn for an ext. time to file the transcript is granted. The transcript is due 9/17/90. This order does not waive the mandatory fee reduction for any portion of the transcripts delivered late. . . [89-50556, 89-50562] (dmd) [89-50556 89-50562]

10/1/90 Filed Ct. Rptr. Robert L. Cipolloni's motion to extend time to file Reporter's Transcript until 11/15/90 served on 9/24/90. (no action necessary per PROMO) [89-50556, 89-50562] (jlc) [89-50556 89-50562]

5/2/91 Filed motion and order (Deputy Clerk: cb) ct reorte Robert Cipolloni's mtn for an ext of time to file the transcript is granted. The transcript is due 5/15/91. Nom further e t of time to file the transcript will be granted. This order does not waive the mandatory fee reduction for any portion of the transcripts delivered late. See Report of The proceedings of the Judicial Conference of the US. . . . This order shall be provided to the reporter at the DC. A new schedule will be established, if appropriate, upon review of aplts' response to the order to show cause. This order is subject to . . . in 89-50556, 89-50562 (Motion recvd 4/29/91) [89-50556, 89-50562] (rc) [89-50556 89-50562]

5/2/91 Filed order (Deputy Clerk: cb) on 6/27/90, the court stayed proceedings in these appeals and instructed aplts to file a status report on or before 8/2/91. Court records do not reflect the filing of the report. Within 14 days from the entry of this order, aplts shall file the report and shall each pay $250 to the clk as a sanction or show cause why such a fine would be unwarranted. A new schedule will be established, if appropriate, upon review of aplts' response. Failure to respond to this order in a timely rfashion will subject these appeals to dismissal under 9th Cir. 42-1. response to order to show cause due 5/17/91 in 89-50556, in 89-50562;

[89-50556, 89-50562] (dmd) [89-50556 89-50562]

5/7/91 Filed defts/aplts response to order to show cause w/exhibit (5/6) (CRIMATT) [89-50556, 89-50562] (REFERRED TO MERITS PNAEL;—copies to casefile) (dmd) [89-50556 89-50562]

6/7/91 Filed order (Joseph T. SNEED,): . . . text . . . within 14 days from the entry of this order, the reporter shall show cause in writing why he should not be sanctioned for excessive delay in filing the transcripts. . . . Appellants' response to the clk's order to show cause shall be REFERRED TO THE MERITS PANEL for a determination as to the propriety of sanctions. Briefing shall proceed as follows: opening brief due 7/29/91; answering brief due 8/28/91; reply brief due 14 days from service of answering brief. (Certified: p 497 119 118: Robert Cipolloni c/o USDC-CAC) [89-50556, 89-50562] (ckp) [89-50556 89-50562]

7/26/91 10 day oral extension by phone of time to file Appellant in 89-50556, Appellant in 89-50562 brief. [89-50556, 89-50562] appellants' brief due 8/8/91; appellees' brief due 9/9/91; appellants' reply brief due 14 days from service of answering brief. (ra) [89-50556 89-50562]

8/13/91 filed aplt's opening brief (47 pgs) original + 15 copies + 5 excerpts of record (8/8) [89-50556, 89-50562] (dmd) [89-50556 89-50562]

8/20/91 Filed aplt's mtn to take judicial notice of declarations set forth in the supplement to the record (8/8) [89-50556, 89-50562] [1983006] [89-50556, 89-50562] (dmd) [89-50556 89-50562]

8/20/91 Recvd aplts' supplement to the record in 5 vols (mtn pending) [89-50556, 89-50562] (REFERRED TO MERITS PANEL) (dmd) [89-50556 89-50562]

8/23/91 Received aplts erratum (8/20) (CRIMATT) [89-50556, 89-50562] (ckp) [89-50556 89-50562]

8/23/91 Received def-aplt (Gottesman) erratum (8/20) no action necessary per ahh casefile [89-50556, 89-50562] (ckp) [89-50556 89-50562]

8/27/91 Filed motion & order (Deputy Clk: ah) aple's motion for an extension of time in which to file the answering brief is granted. The answering brief is due 10/10/91. The optional reply brief is due 14 days from service of the answering brief. No further extension of time to file this brief will be granted absent the showing of extraordinary circumstance required under Ninth Cir. R. 31-2.3(c). Aplt's request for judicial notice of the declarations filed in . . . (cite) . . . 713 F. Supp. 469 (D.D.C. 1989) and any related filings are REFERRED TO THE MERITS PANEL for disposition. The parties are reminded that such disposition will not take place until briefing is complete and the cs i calendared. in 89-50556, 89-50562 (Motion recvd 8/22/91) [89-50556, 89-50562] (ckp) [89-50556 89-50562]

9/3/91 Filed order (Joseph T. SNEED,): . . . the reporter is granted one final opportunity to show cause why he should not be sanctioned for his excessive delay in the preparation of these transcripts. The response shall be filed within 14 days from the entry of this order. If

the reporter does not respond within the noted time period, a fine will be imposed without further notice. (Certified: P 497 119 091 – c/o Donna Stephenson) [89-50556, 89-50562] (dmd) [89-50556 89-50562]

9/16/91 Received ERRATUM pursuant to a telephone conversation with Adrianne Hickman copies s/b enclosed in the brief (RECORDS) [89-50556, 89-50562] (ckp) [89-50556 89-50562]

9/18/91 Filed Ct Rpter Robert Cipolloni's response to order to show cause (PROMO, work in progress) [89-50556, 89-50562] (rc) [89-50556 89-50562]

10/15/91 Filed original and 15 copies appellee USA in 89-50556's 33 pages brief, 5 supplemental Exc. 1 vols: ; served on 10/10/91 [89-50556, 89-50562] (ckp) [89-50556 89-50562]

10/15/91 Filed aple's motion to strike aplt's supplement to record (10/10) (CRIMAT) [89-50556, 89-50562] [2012142] (ckp) [89-50556 89-50562]

10/15/91 Filed aple's motion to strike part of aplt's sup to record [89-50556, 89-50562] served on 10/10/91 [2028649] submit to PROMO PER CRIMAT (ckp) [89-50556 89-50562]

10/16/91 Filed order (Joseph T. SNEED, Cecil F. POOLE,): on 6/7/91, Court Reporter Robert Cipolloni was ordered to show cause as to why sanctions should not be impsoed for his excessive delay in the filing of the transcripts for these appeals. Although the reporter appeared to have filed the transcripts, court records did not reflect that the reporter has responded to

the 6/7 order. On 9/3/91, the reporter was granted one final opportunity to show cause why he should not be sanctioned for his excessive delay in the preparation of these transcripts. The court has determined that the response does not fully discharge the previous orders to show cause. Reporter Cipolloni is hereby fined $100. This sanction is imposed as a judgment, and shall be paid to the clerk of this court within 14 days from the entry of this order. If the reporter does not paid the fine in a timely fashion, the judgment will be referred to the United States Attorney for collection. If the reporter causes similar delays in the future or fails to respond to court orders, larger fines will be imposed. This order shall be transmitted to the reporter via certified mail in care of the court reporter supervisor; copies of this order shall be provided to the chief district judge, the district judge, the district court clerk and the court reporter supervisor. (P 497 119 074) [89-50556, 89-50562] (ckp) [89-50556 89-50562]

10/25/91 10 day oral extension by phone of time to file Appellant in 89-50556, Appellant in 89-50562's reply brief. [89-50556, 89-50562] appellants' reply brief due 11/18/91 in 89-50556, in 89-50562; (ah) [89-50556 89-50562]

11/13/91 Filed aplts' reply to government's motion to strike aplts supplement to record. [2012142-1] in 89-50556, 89-50562; served on 11/6/91 [89-50556, 89-50562] (ckp) [89-50556 89-50562]

11/13/91 Filed original and 15 copies reply brief, (Informal: no) 21 pages; served on 11/6/91 [89-50556, 89-50562] (ckp) [89-50556 89-50562]

12/9/91 Filed motion & order (Deputy Clk: ahh) aple's motion to strike aplt's supplement to the record is denied as moot. Aple is referred to the 8/27/91 order which refers aplt's request for judicial notice to the merits panel. Until the MERITS PANEL has determined whether the material is appropriate for notice it is not part of the record. [2035933-1] in 89-50556, 89-50562 (Motion recvd 10/15/91) [89-50556, 89-50562] (ckp) [89-50556 89-50562]

1/2/92 Calendar check performed [89-50556, 89-50562] (th) [89-50556 89-50562]

1/16/92 Calendar materials being prepared. [89-50556, 89-50562] [89-50556, 89-50562] (th) [89-50556 89-50562]

1/21/92 CALENDARED: Pasadena 3/5/92 9:00 a.m. Courtroom 3 [89-50556, 89-50562] (th) [89-50556 89-50562]

1/21/92 Received X-Citement Video additional citations, served on 1/14/92 (PANEL) [89-50556, 89-50562] (ckp) [89-50556 89-50562]

2/7/92 Filed order (Deputy Clerk: aw) the request of aplt that the court take judicial notice of materials in the supplement of record is denied. [1983006-1] in 89-50556, 89-50562 [89-50556, 89-50562] (ckp) [89-50556 89-50562]

2/10/92 Received Stanley Fleishman letter dated 2/7/92 re: acts in this case violates the free

	speech and press press provisions of the First Amendment (PANEL) [89-50556, 89-50562] (ckp) [89-50556 89-50562]
3/5/92	ARGUED AND SUBMITTED TO William C. CANBY, Alex KOZINSKI, Ferdinand F. FERNANDEZ [89-50556, 89-50562] (lu) [89-50556 89-50562]
3/5/92	Received USA in 89-50556, USA in 89-50562 additional citations, served on 3/5/92. (panel) [89-50556, 89-50562] (lu) [89-50556 89-50562]
3/16/92	Received Stanley Fleishman additional citations, served on 3/10/92 (PANEL) [89-50556, 89-50562] (ckp) [89-50556 89-50562]
4/23/92	Sent letter to United States Attorney, Central District re: collection of 10/16 sanction [89-50556, 89-50562] (cb) [89-50556 89-50562]
7/22/92	Received letter dated 7/22/92 from Barry Levin, Office of United States Attorney re: court reporter paid sanction to district court [89-50556, 89-50562] (cb) [89-50556 89-50562]
8/4/92	Sent letter to Barry Levine re: given payment of fine to district court, collection efforts may be deemed concluded [89-50556, 89-50562] (cb) [89-50556 89-50562]
9/25/92	Received Stanley Fleishman letter dated 9/22/92 re: the Missouri statute restricting the rental or sale of videocassettes. (PANEL) [89-50556, 89-50562] (ckp) [89-50556 89-50562]
10/5/92	Received Stanley Fleishman additional citations, "The Disturbing Photography of Sally Mann" (PANEL) [89-50556, 89-50562] (ckp) [89-50556 89-50562]

12/16/92	FILED OPINION: REVERSED (Terminated on the Merits after Oral Hearing; Reversed; Written, Signed, Published. William C. CANBY, author; Alex KOZINSKI, dissenting; Ferdinand F. FERNANDEZ.) FILED AND ENTERED JUDGMENT. [89-50556, 89-50562] (ck) [89-50556 89-50562]
1/5/93	Filed deputy clerk order: (Deputy Clerk: tsp) granting motion & order to extend time to file a petition for rehearing and petition for rehearing en banc. The petition for rehearing due 1/27/93 in 89-50556, in 89-50562; in 89-50556, 89-50562 (Motion recvd 12/23/92) [89-50556, 89-50562] (tsp) [89-50556 89-50562]
1/27/93	[2285953] Filed original and 40 copies aple's petition for rehearing with suggestion for rehearing en banc. (PANEL AND ALL ACTIVE JUDGES) 15 p.pages, served on 1/26/93 [89-50556, 89-50562] (rc) [89-50556 89-50562]
5/4/93	Filed order (William C. CANBY, Alex KOZINSKI, Ferdinand F. FERNANDEZ,): The ct orders a response to the petition for rehearing; it shall be filed by 5/14/93. [89-50556, 89-50562] (tsp) [89-50556 89-50562]
5/17/93	Filed Appellant X-Citement Video and Rubin Gottesman response to petition for rhearing pursuant to ct order served on 5/14/93 (PANEL & EN BANC COURT) [89-50556, 89-50562] (tsp) [89-50556 89-50562]
7/9/93	Filed order (William C. CANBY, Alex KOZINSKI, Ferdinand F. FERNANDEZ) . . . The petition for rehearing is denied and

the suggestion for rehearing en banc is rejected. [2285953-1] (Note: for complete text see order) [89-50556, 89-50562] (rc) [89-50556 89-50562]

7/16/93 Filed aple's mtn to stay mdt pending application for writ o certiorari; declaration of Miriam A. Krinsky. (Lead W.C) [89-50556, 89-50562] served on 7/15/93 [2391972] (rc) [89-50556 89-50562]

7/23/93 Filed order (William C. CANBY, Alex KOZINSKI, Ferdinand F. FERNANDEZ,): The mot of pltf-aple to stay the mandate is granted. The mandate is stayed for 30 days from the date of the filing of this order, if, within that time, the clk of this court is notified by the clk of the Supreme Ct of the US that a petition for cert has been filed, then the mandate is further stayed until the final disposition of the matter by the Supreme Ccourt. in 89-50562 [89-50556, 89-50562] (tsp) [89-50556 89-50562]

8/23/93 Filed Aple motion for additional thirty days to stay the mandate. (lead W.C) served on 8/20/93 [89-50556, 89-50562] (gva) [89-50556 89-50562]

8/31/93 Filed order (William C. CANBY, Alex KOZINSKI, Ferdinand F. FERNANDEZ,): The mot of pltf-aple to stay the mandate for an additional 30 days is granted. The mandate is stayed for additional 30 days from the date of the filing of this order. If, within that time, the clk of this ct is notified by the clk of the supreme ct that a petition for cert has been filed, then the mandate is further stayed until

the final disposition of the matter by the Supreme Ct. [89-50556, 89-50562] (tsp) [89-50556 89-50562]

9/29/93 Filed USA in 89-50556, USA in 89-50562 motion to stay the mandate until 11/6/93 or pet for cert filed. (PANEL) [89-50556, 89-50562] served on 9/24/93 [2436038] (ah) [89-50556 89-50562]

10/8/93 Filed order (William C. CANBY, Alex KOZINSKI, Ferdinand F. FERNANDEZ) the mtn of pltf-aple to stay the mandate until 11/6/93 is GRANTED. The mandate is stayed until 11/6/93 or until the Clk of this Ct is notified by the Clk of the Supreme Ct of the U.S. that a petition for cert has been filed, then the mandate is further stayed until the final disposition of the matter by the Supreme Ct. [2436038-1] [89-50556, 89-50562] (rc) [89-50556 89-50562]

11/12/93 Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 93-723 filed on 11/5/93. [89-50556, 89-50562] (ah) [89-50556 89-50562]

3/9/94 Received notice from Supreme Court, petition for certiorari GRANTED on 2/28/94 (crw) [89-50556 89-50562]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
Grand Jury—October, 1987

No. CR-88-

UNITED STATES OF AMERICA, PLAINTIFF

v.

RUBIN GOTTESMAN, X-CITEMENT VIDEO, INC., AND R.G. SALES COMPANY, DEFENDANTS

INDICTMENT

[18 U.S.C. § 1962(c) and (d), Conducting a Racketeer Influenced and Corrupt Organization and Conspiracy; 18 U.S.C. § 1462, Interstate Transportation of Obscene Matters; 18 U.S.C. § 371, Conspiracy; 18 U.S.C. § 2252(a)(1) and (a)(2), Sexual Exploitation of Minors; 18 U.S.C. § 2, Aiding and Abetting; 18 U.S.C. § 922(g) and § 924, Possession of Firearm by Convicted Felon.]

THE GRAND JURY CHARGES:

At all times material to this indictment:

THE ENTERPRISE

1. Defendants RUBIN GOTTESMAN and STEVEN ORENSTEIN, and the following defendant entity, X-CITEMENT VIDEO, INC., and others known and unknown to the grand jury, constituted an enterprise as defined by Title 18, United States Code, Section 1961(4),

that is, a group of individuals and corporations associated in fact, which engaged in and whose leaders, members and associates operated and engaged in various unlawful activities in the Central District of California and elsewhere, including:

The knowing use of an express company and common carrier for carriage in interstate commerce to transport from the Central District of California to the District of Hawaii, obscene, lewd, lascivious, and filthy pamphlets, pictures, motion picture films, writings, electrical transcriptions, and other matters of indecent character, in violation of Title 18, United States Code, Section 1462.

PURPOSES OF THE ENTERPRISE

2. The purposes of the enterprise included:

(a) the transportation in interstate commerce of obscene pictures, motion pictures, films or other matters of indecent character, that is, video cassette tapes, the object of which was to obtain money for the members of the enterprise, and

(b) the possession of a firearm by a convicted felon.

MEANS AND METHODS OF THE ENTERPRISE

3. Among the means and methods by which defendants RUBIN GOTTESMAN and STEVEN ORENSTEIN, and the following defendant entity, X-CITEMENT VIDEO, Inc., and others known and unknown to the grand jury, conducted and participated in the conduct of the affairs of the enterprise were the following:

(a) RUBIN GOTTESMAN was the principal owner and operator and one of the owners and operators of X-CITEMENT VIDEO, INC., located at 7116-7118 De Celis Place, Van Nuys, Los Angeles, California. It was his responsibility to (1) oversee the operation of the enterprise

and to participate in major decisions concerning the enterprise, including the ordering of obscene video cassette tapes, and other matters of indecent and immoral character; (2) give orders and directions to other members of the enterprise and its employees and associates; (3) facilitate the interstate transportation of obscene video cassette tapes, and other matters of indecent and immoral character; and (4) possess a firearm at his place of business to protect his business interests even though such possession was unlawful in that he was a convicted felon.

(b) STEVEN ORENSTEIN was an employee of X-CITEMENT VIDEO, INC. It was his responsibility to: (1) assist RUBIN GOTTESMAN in the operation of the enterprise; (2) give orders to other members of the enterprise and its employees and associates; and (3) facilitate the interstate transportation of obscene video cassette tapes, and other matters of indecent and immoral character.

(c) X-CITEMENT VIDEO, INC. was: (1) located at 7116-7118 De Celis Place, Van Nuys, City of Los Angeles, California; (2) a wholesale/retail outlet selling obscene video cassette tapes and other matters of indecent and immoral character; and (3) the name of a company used by members of the enterprise.

THE GRAND JURY CHARGES:

COUNT ONE

[18 U.S.C. § 1962(d)]

4. Introductory paragraphs 1 through 3 of this indictment (pages 1 through 3) are hereby incorporated as if fully set forth herein by reference in Count One.

5. In about June 1986, until the date of the filing of this indictment, in the Central District of California and elsewhere, defendants herein,

RUBIN GOTTESMAN and
STEVEN ORENSTEIN,

and the defendant entity,

X-CITEMENT VIDEO, INC.,

and others known and unknown to the grand jury, being persons employed by and associated with an enterprise engaged in, and the activities of which affected interstate commerce, did unlawfully, willfully, and knowingly combine, conspire, confederate, and agree with each other, and with persons known and unknown to the grand jury, to commit an offense against the United States, that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of the above-described enterprise, through a pattern of racketeering activity, in violation of Title 18, United States Code, Section 1962(c).

6. It was a part of said conspiracy that the pattern of racketeering activity as referenced above and as defined by Title 18, United States Code, Sections 1961(1)(A), 1961(1)(B), and 1961(5), consisted of the following acts of racketeering activity involving the interstate transportation of obscene matters, as more fully set forth below:

(a) It was part of the conspiracy that from on about and between July 3, 1986, and July 8, 1986, defendants RUBIN GOTTESMAN and STEVEN ORENSTEIN, by and through the defendant entity, X-CITEMENT VIDEO, INC., did unlawfully, knowingly and willfully use an express company and common carrier for carriage in interstate commerce to transport from the Central District of California to the District of Hawaii, obscene, lewd, lascivious, and filthy pamphlets, pictures, motion picture films, writings, electrical transcriptions, and other matters of indecent character, to-wit:

The following video cassette tape:

i. *Beyond DeSade/Never a Tender Moment*

in violation of Title 18, United States Code, Section 1462, as set forth in Count Three of this indictment.

(b) It was part of the conspiracy that from on about and between July 17, 1986, and July 28, 1986, defendants RUBIN GOTTESMAN and STEVEN ORENSTEIN, by and through the defendant entity, X-CITEMENT VIDEO, INC., did unlawfully, knowingly and willfully use an express company and common carrier for carriage in interstate commerce to transport from the Central District of California to the District of Hawaii, obscene, lewd, lascivious, and filthy pamphlets, pictures, motion picture films, writings, electrical transcriptions, and other matters of indecent character, to-wit:

The following video cassette tapes:

i. *Prisoner of Pleasure*
ii. *The Story of Prunella*

in violation of Title 18, United States Code, Section 1462, as set forth in Count Four of this indictment.

(c) It was part of the conspiracy that from on about and between September 17, 1986, and September 19, 1986, defendants herein, RUBIN GOTTESMAN and STEVEN ORENSTEIN, by and through the defendant entity, X-CITEMENT VIDEO, INC., did unlawfully, knowingly and willfully use an express company and common carrier for carriage in interstate commerce to transport from the Central District of California to the District of Hawaii, obscene, lewd, lascivious, and filthy pamphlets, pictures, motion picture films, writings, electrical transcriptions, and other matters of indecent character, to-wit:

The following video cassette tapes:

i. *Kneel Before Me*
ii. *Prisoner of Pleasure*
iii. *The Story of Prunella*

in violation of Title 18, United States Code, Section 1462, as set forth in Count Five of this indictment.

(d) It was part of the conspiracy that from on about and between December 4, 1986, and December 16, 1986, defendants herein, RUBIN GOTTESMAN and STEVEN ORENSTEIN, by and through the defendant entity, X-CITEMENT VIDEO, INC., did unlawfully, knowingly and willfully use an express company and common carrier for carriage in interstate commerce to transport from the Central District of California to the District of Hawaii, obscene, lewd, lascivious, and filthy pamphlets, pictures, motion picture films, writings, electrical transcriptions, and other matters of indecent character, to-wit:

The following video cassette tape:

i. *Beyond DeSade/Never a Tender Moment*

in violation of Title 18, United States Code, Section 1462, as set forth in Count Six of this indictment.

(e) It was part of the conspiracy that from on about and between April 28, 1987, and April 30, 1987, defendants herein, RUBIN GOTTESMAN and STEVEN ORENSTEIN, by and through the defendant entity, X-CITEMENT VIDEO, INC., did unlawfully, knowingly and willfully use an express company and common carrier for carriage in interstate commerce to transport from the Central District of California to the District of Hawaii obscene, lewd, lascivious, and filthy pamphlets, pictures, motion picture films, writings, electrical transcriptions, and other matters of indecent character, to-wit:

The following video cassette tape:

i. *Kneel Before Me*

in violation of Title 18, United States Code, Section 1462, as set forth in Count Seven of this indictment.

(f) It was part of the conspiracy that from on about and between May 12, 1987, and May 15, 1987, defendant

RUBIN GOTTESMAN, by and through the defendant entity, X-CITEMENT VIDEO, INC., did unlawfully, knowingly and willfully use an express company and common carrier for carriage in interstate commerce to transport from the Central District of California to the District of Hawaii obscene, lewd, lascivious, and filthy pamphlets, pictures, motion picture films, writings, electrical transcriptions, and other matters of indecent character, to-wit:

The following video cassette tapes:

i. *Beyond DeSade/Never a Tender Moment*
ii. *Kneel Before Me*
iii. *Prisoner of Pleasure*
iv. *The Story of Prunella*

in violation of Title 18, United States Code, Section 1462, as set forth in Count Eight of this indictment.

OVERT ACTS

7. In furtherance of the above-described conspiracy and to achieve the objects thereof, the following overt acts were committed in the Central District of California and elsewhere:

a. From on about June, 1986, until the date of the filing of this indictment, defendant RUBIN GOTTESMAN acted as and conducted the business of X-CITEMENT VIDEO, INC. as principal owner and operator, and caused to be filed a Statement by Domestic Stock Corporation for X-CITEMENT VIDEO, INC. in the State of California, which document identified RUBIN GOTTESMAN as Chief Executive Officer, Chief Financial Officer, sole Director, and Designated Agent for Service of Process of X-CITEMENT VIDEO, INC., and which was executed by RUBIN GOTTESMAN on about December 30, 1985.

b. From on about June 1986, until the date of the filing of this indictment, defendant RUBIN GOTTESMAN

acted as and conducted the business of X-CITEMENT VIDEO, INC. as principal owner and operator, and caused to be filed a Notice of Issuance of Shares for X-CITEMENT VIDEO, INC. in the State of California, which document identified RUBIN GOTTESMAN as President of X-CITEMENT VIDEO, INC., and which was executed by RUBIN GOTTESMAN on about December 30, 1985.

c. On about June 3, 1986, in Chicago, Illinois, defendant STEVEN ORENSTEIN met with an undercover police officer of the Los Angeles Police Department and discussed the availability of Avon video cassette tapes.

d. On about June 11, 1986, in Los Angeles, California, defendants RUBIN GOTTESMAN and STEVEN ORENSTEIN met with an undercover police officer of the Los Angeles Police Department and an undercover special agent of the Federal Bureau of Investigation, at 7116 De Celis Place, Van Nuys, Los Angeles, California, and arranged to ship video cassette tapes to Honolulu, Hawaii.

e. On about and between July 3, 1986 and July 8, 1986, defendants RUBIN GOTTESMAN and STEVEN ORENSTEIN, by and through the defendant entity, X-CITEMENT VIDEO, INC., used a common carrier to ship from Los Angeles, California to Honolulu, Hawaii, the following video cassette tape:

i. *Beyond DeSade/Never a Tender Moment.*

f. On about and between July 17, 1986 and July 28, 1986, defendants RUBIN GOTTESMAN and STEVEN ORENSTEIN, by and through the defendant entity, X-CITEMENT VIDEO, INC., used a common carrier to ship from Los Angeles, California to Honolulu, Hawaii, the following video cassette tapes:

i. *Prisoner of Pleasure*
ii. *The Story of Prunella.*

g. On about September 17, 1986, in Los Angeles, California, defendants RUBIN GOTTESMAN and STEVEN ORENSTEIN met with an undercover police officer of the Los Angeles Police Department at 7116 De Celis Place, Van Nuys, Los Angeles, California, and discussed an order of video cassette tapes.

h. On about and between September 17, 1986 and September 19, 1986, defendants RUBIN GOTTESMAN and STEVEN ORENSTEIN, by and through the defendant entity, X-CITEMENT VIDEO, INC., used a common carrier to ship from Los Angeles, California to Honolulu, Hawaii, the following video cassette tapes:

i. *Kneel Before Me*
ii. *Prisoner of Pleasure*
iii. *The Story of Prunella.*

i. On about December 4, 1986, in Los Angeles, California, defendants RUBIN GOTTESMAN and STEVEN ORENSTEIN met with an undercover police officer at 7116-7118 De Celis Place, Van Nuys, Los Angeles, California, and discussed an order of video cassette tapes.

j. On about and between December 4, 1986 and December 16, 1986, defendants RUBIN GOTTESMAN and STEVEN ORENSTEIN, by and through the defendant entity, X-CITEMENT VIDEO, INC., used a common carrier to ship from Los Angeles, California to Honolulu, Hawaii, the following video cassette tape:

i. *Beyond DeSade/Never a Tender Moment.*

k. On about April 28, 1987 and April 30, 1987, defendants RUBIN GOTTESMAN and STEVEN ORENSTEIN, by and through the defendant entity, X-CITEMENT VIDEO, INC., caused to be shipped from Los Angeles, California to Honolulu, Hawaii, the following video cassette tape:

i. *Kneel Before Me.*

l. On about May 12, 1987 and May 15, 1987, defendant RUBIN GOTTESMAN, by and through the defendant entity, X-CITEMENT VIDEO, INC., used a common carrier to ship from Los Angeles, California to Honolulu, Hawaii, the following video cassette tapes:

i. *Beyond DeSade/Never a Tender Moment*
ii. *Kneel Before Me*
iii. *Prisoner of Pleasure*
iv. *The Story of Prunella.*

All in violation of Title 18, United States Code, Section 1962(d).

THE GRAND JURY CHARGES:

COUNT TWO

[18 U.S.C. § 1962(c) & 2]

4. Introductory paragraphs 1 through 3 of this indictment (pages 1 through 3) are hereby incorporated as if fully set forth herein by reference in Count Two.

5. From in about June 1986, and continuing thereafter up to and including May, 1987, within the Central District of California and elsewhere, defendants herein,

RUBIN GOTTESMAN and
STEVEN ORENSTEIN,

and the defendant entity,

X-CITEMENT VIDEO, INC.,

and others known and unknown to the grand jury, being persons employed by and associated with the above-described criminal enterprise, did unlawfully, willfully, and knowingly conduct and participate, directly and indirectly, in the conduct of the affairs of said enterprise, which engaged in and the activities of which affected in-

terstate and foreign commerce, through a pattern of racketeering activity, in violation of Title 18, United States Code, Section 1962(c).

6. The pattern of racketeering activity as defined by Title 18, United States Code, Sections 1961(1)(A), 1961(1)(B), and 1961(5), consisted of the following acts of racketeering activity involving the interstate transportation of obscene matters, as more fully set forth below:

(a) From on about and between July 3, 1986, and July 8, 1986, defendants RUBIN GOTTESMAN and STEVEN ORENSTEIN, by and through the defendant entity, X-CITEMENT VIDEO, INC., did unlawfully, knowingly and willfully use an express company and common carrier for carriage in interstate commerce to transport from the Central District of California to the District of Hawaii, obscene, lewd, lascivious, and filthy pamphlets, pictures, motion picture films, writings, electrical transcriptions, and other matters of indecent character, to-wit:

The following video cassette tape:

i. *Beyond DeSade/Never a Tender Moment*

in violation of Title 18, United States Code, Section 1462, as set forth in Count Three of this indictment.

(b) From on about and between July 17, 1986, and July 28, 1986, defendants RUBIN GOTTESMAN and STEVEN ORENSTEIN, by and through the defendant entity, X-CITEMENT VIDEO, INC., did unlawfully, knowingly and willfully use an express company and common carrier for carriage in interstate commerce to transport from the Central District of California to the District of Hawaii, obscene, lewd, lascivious, and filthy pamphlets, pictures, motion picture films, writings, electrical transcriptions, and other matters of indecent character, to-wit:

The following video cassette tapes:

i. *Prisoner of Pleasure*
ii. *The Story of Prunella*

in violation of Title 18, United States Code, Section 1462, as set forth in Count Four of this indictment.

(c) From on about and between September 17, 1986, and September 19, 1986, defendants herein, RUBIN GOTTESMAN and STEVEN ORENSTEIN, by and through the defendant entity, X-CITEMENT VIDEO, INC., did unlawfully, knowingly and willfully use an express company and common carrier for carriage in interstate commerce to transport from the Central District of California to the District of Hawaii, obscene, lewd, lascivious, and filthy pamphlets, pictures, motion picture films, writings, electrical transcriptions, and other matters of indecent character, to-wit:

The following video cassette tapes:

i. *Kneel Before Me*
ii. *Prisoner of Pleasure*
iii. *The Story of Prunella*

in violation of Title 18, United States Code, Section 1462, as set forth in Count Five of this indictment.

(d) From on about and between December 4, 1986, and December 16, 1986, defendants herein, RUBIN GOTTESMAN and STEVEN ORENSTEIN, by and through the defendant entity, X-CITEMENT VIDEO, INC., did unlawfully, knowingly and willfully use an express company and common carrier for carriage in interstate commerce to transport from the Central District of California to the District of Hawaii, obscene, lewd, lascivious, and filthy pamphlets, pictures, motion picture films, writings, electrical transcriptions, and other matters of indecent character, to-wit:

The following video cassette tape:

i. *Beyond DeSade/Never a Tender Moment*

in violation of Title 18, United States Code, Section 1462, as set forth in Count Six of this indictment.

(e) From on about and between April 28, 1987, and April 30, 1987, defendants herein, RUBIN GOTTESMAN and STEVEN ORENSTEIN, by and through the defendant entity, X-CITEMENT VIDEO, INC., did unlawfully, knowingly and willfully use an express company and common carrier for carriage in interstate commerce to transport from the Central District of California to the District of Hawaii obscene, lewd, lascivious, and filthy pamphlets, pictures, motion picture films, writings, electrical transcriptions, and other matters of indecent character, to-wit:

The following video cassette tape:

i. *Kneel Before Me*

in violation of Title 18, United States Code, Section 1462, as set forth in Count Seven of this indictment.

(f) From on about and between May 12, 1987, and May 15, 1987, defendant RUBIN GOTTESMAN, by and through the defendant entity, X-CITEMENT VIDEO, INC., did unlawfully, knowingly and willfully use an express company and common carrier for carriage in interstate commerce to transport from the Central District of California to the District of Hawaii, obscene, lewd, lascivious, and filthy pamphlets, pictures, motion picture films, writings, electrical transcriptions, and other matters of indecent character, to-wit:

The following video cassette tapes:

i. *Beyond DeSade/Never a Tender Moment*
ii. *Kneel Before Me*
iii. *Prisoner of Pleasure*
iv. *The Story of Prunella*

in violation of Title 18, United States Code, Section 1462,

as set forth in Count Eight of this indictment.

All in violation of Title 18, United States Code, Sections 1962(c) and 2.

FORFEITURE ALLEGATIONS

1. Introductory paragraphs 1 through 3 and Counts One and Two of this indictment (pages 1 through 16) are hereby incorporated by reference as if fully set forth herein for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 1963.

2. Through the aforesaid pattern of racketeering activity, the defendants, RUBIN GOTTESMAN, STEVEN ORENSTEIN, and X-CITEMENT VIDEO, INC., have acquired and maintained interests in violation of Title 18, United States Code, Section 1962, all of which interests, wherever located and in whatever names held, are therefore subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(1).

3. The defendants, RUBIN GOTTESMAN, STEVEN ORENSTEIN, and X-CITEMENT VIDEO, INC., have interests in, security of, claims against, and property and contractual rights affording a source of influence over the above-described enterprise, which the defendants established, operated, controlled, conducted, and participated in the conduct of, in violation of Title 18, United States Code, Section 1962, all of which interests, security, claims, and property and contractual rights, wherever located and in whatever names held, are therefore subject to forfeiture to the United States, pursuant to Title 18, United States Code, Section 1963(a)(2).

4. The defendants, RUBIN GOTTESMAN, STEVEN ORENSTEIN, and X-CITEMENT VIDEO, INC., have property constituting and derived from proceeds which the defendants obtained, directly and indirectly, from racke-

teering activity in violation of Title 18, United States Code, Section 1962, all of which property, wherever located and in whatever names held, is therefore subject to forfeiture to the United States, pursuant to Title 18, United States Code, Section 1963(a)(3).

5. The property subject to forfeiture to the United States pursuant to paragraphs 2, 3, and 4, above, includes but is not limited to, the following interests of the defendants, RUBIN GOTTESMAN and X-CITEMENT VIDEO, INC.:

a. The real property, improvements, appurtenances and fixtures thereon, located at 22482 Calipatria Drive, Woodland Hills, Los Angeles County, California, and more particularly described as:

> Lot 121 of Tract No. 29150 as per map recorded in Book 739 Page 57 of Maps, in the office of the County Recorder of said County;

b. The following stock certificates, holdings, interests and proceeds thereof: All shares of stock of X-CITEMENT VIDEO, INC., owned by or on behalf of RUBIN GOTTESMAN;

c. The following bank accounts, and all funds credited to the accounts, as of the date of this indictment:

BANK	ACCOUNT NAME	ACCOUNT NUMBER
Santa Clarita National Bank	X-CITEMENT VIDEO, INC.	404 034 392
Santa Clarita National Bank	X-CITEMENT VIDEO, INC. Payroll Account	404 035 208
Santa Clarita National Bank	X-CITEMENT VIDEO, INC. Special Account	404 034 422
Santa Clarita National Bank	X-CITEMENT VIDEO	404 033 221
Santa Clarita National Bank	RUBIN GOTTESMAN	404 376 218
Santa Clarita National Bank	RUBIN GOTTESMAN or BARBARA GOTTESMAN	404 374 010
Wilshire CenterBank	X-CITEMENT VIDEO, INC.	01 104 098

d. Any and all personal property of X-CITEMENT VIDEO, INC. "Property" means and includes, but is not limited to, the contents of the below-listed location, and any and all locations from which X-CITEMENT VIDEO, INC. conducted its business. "Contents" includes, but is not limited to, various items as follows: video cassette tape recorders and/or players, television monitors, telephone systems and answering machines, video cassette tapes, including blank and recorded tapes, and other inventory, computer systems, including hardware and software, office equipment, including such items as calculators, cash registers, typewriters and copying machines, office fur-

nishings such as desks, chairs and filing cabinets, shelving and display materials, United States currency, and other contents;

X-CITEMENT VIDEO, INC.
7116-7118 De Celis Place
Van Nuys, Los Angeles, California.

THE GRAND JURY FURTHER CHARGES:

COUNT THREE

[18 U.S.C. §§ 1462 & 2]

On about and between July 3, 1986, and July 8, 1986, defendants herein,

RUBIN GOTTESMAN and
STEVEN ORENSTEIN,

and the following defendant entity,

X-CITEMENT VIDEO, INC.,

did unlawfully and knowingly use an express company and common carrier for carriage in interstate commerce to transport from the Central District of California to the District of Hawaii, obscene, lewd, lascivious, and filthy pamphlets, pictures, motion picture films, writings, electrical transcriptions, and other matters of indecent character, to-wit:

The following video cassette tape:

a. *Beyond DeSade/Never a Tender Moment*

All in violation of Title 18, United States Code, Sections 1462 and 2.

THE GRAND JURY FURTHER CHARGES:

COUNT FOUR

[18 U.S.C. §§ 1462 & 2]

On about and between July 17, 1986, and July 28, 1986, defendants herein,

RUBIN GOTTESMAN and
STEVEN ORENSTEIN,

and the following defendant entity,

X-CITEMENT VIDEO, INC.,

did unlawfully and knowingly use an express company and common carrier for carriage in interstate commerce to transport from the Central District of California to the District of Hawaii, obscene, lewd, lascivious, and filthy pamphlets, pictures, motion picture films, writings, electrical transcriptions, and other matters of indecent character, to-wit:

The following video cassette tapes:

a. *Prisoner of Pleasure*
b. *The Story of Prunella*

All in violation of Title 18, United States Code, Sections 1462 and 2.

THE GRAND JURY FURTHER CHARGES:

COUNT FIVE

[18 U.S.C. §§ 1462 & 2]

On about and between September 17, 1986, and September 19, 1986, defendants herein,

RUBIN GOTTESMAN and
STEVEN ORENSTEIN,

and the following defendant entity,

X-CITEMENT VIDEO, INC.,

did unlawfully and knowingly use an express company and common carrier for carriage in interstate commerce to transport from the Central District of California to the District of Hawaii, obscene, lewd, lascivious, and filthy pamphlets, pictures, motion picture films, writings, electrical transcriptions, and other matters of indecent character, to-wit:

The following video cassette tapes:

a. *Kneel Before Me*
b. *Prisoner of Pleasure*
c. *The Story of Prunella*

All in violation of Title 18, United States Code, Sections 1462 and 2.

THE GRAND JURY FURTHER CHARGES:

COUNT SIX

[18 U.S.C. §§ 1462 & 2]

On about and between December 4, 1986, and December 16, 1986, defendants herein,

RUBIN GOTTESMAN and
STEVEN ORENSTEIN,

and the defendant entity,

X-CITEMENT VIDEO, INC.,

did unlawfully and knowingly use an express company and common carrier for carriage in interstate commerce to transport from the Central District of California to the District of Hawaii, obscene, lewd, lascivious, and filthy pamphlets, pictures, motion picture films, writings, electrical transcriptions, and other matters of indecent character, to-wit:

The following video cassette tape:

a. *Beyond DeSade/Never a Tender Moment*

All in violation of Title 18, United States Code, Sections 1462 and 2.

THE GRAND JURY FURTHER CHARGES:

COUNT SEVEN

[18 U.S.C. §§ 1462 & 2]

On about and between April 28, 1987, and April 30, 1987, defendants herein,

RUBIN GOTTESMAN and
STEVEN ORENSTEIN,

and the defendant entities,

X-CITEMENT VIDEO, INC.,
and R.G. SALES COMPANY,

did unlawfully and knowingly use an express company and common carrier for carriage in interstate commerce to transport from the Central District of California to the District of Hawaii, obscene, lewd, lascivious, and filthy pamphlets, pictures, motion picture films, writings, electrical transcriptions, and other matters of indecent character, to-wit:

The following video cassette tape:

a. *Kneel Before Me*

All in violation of Title 18, United States Code, Sections 1462 and 2.

THE GRAND JURY FURTHER CHARGES:

COUNT EIGHT

[18 U.S.C. §§ 1462 & 2]

On about and between May 12, 1987, and May 15, 1987, defendant,

RUBIN GOTTESMAN,

and the defendant entity,

X-CITEMENT VIDEO, INC.,

did unlawfully and knowingly use an express company and common carrier for carriage in interstate commerce to transport from the Central District of California to the District of Hawaii, obscene, lewd, lascivious, and filthy pamphlets, pictures, motion picture films, writings, electrical transcriptions, and other matters of indecent character, to-wit:

The following video cassette tapes:

a. *Beyond DeSade/Never a Tender Moment*
b. *Kneel Before Me*
c. *Prisoner of Pleasure*
d. *The Story of Prunella*

All in violation of Title 18, United States Code, Sections 1462 and 2.

THE GRAND JURY FURTHER CHARGES:

COUNT NINE

[18 U.S.C. § 371]

1. At all times material to the indictment, defendant RUBIN GOTTESMAN was doing business as X-CITEMENT VIDEO, INC. and R.G. SALES COMPANY at

7116-7118 De Celis Place, Van Nuys, Los Angeles, California, and dealt in the interstate sale and distribution of sexually explicit materials.

2. At all times material to the indictment, defendant STEVEN ORENSTEIN was employed at X-CITEMENT VIDEO, INC.

3. From on or about February 5, 1987 and continuing thereafter up to and including the date of the filing of this indictment, in the Central District of California and elsewhere, defendants herein,

RUBIN GOTTESMAN and
STEVEN ORENSTEIN,

and the following defendant entities,

X-CITEMENT VIDEO, INC.,
and R.G. SALES COMPANY,

along with unindicted co-conspirator, HOWARD GOTTESMAN, and others known and unknown to the grand jury, did unlawfully, knowingly and willfully conspire, combine, confederate and agree together and with each other to commit offenses against the United States, to-wit:

(a) to knowingly distribute visual depictions that had been transported in interstate commerce, the producing of said visual depictions involving the use of a minor engaging in sexually explicit conduct, as that term is defined in Title 18, United States Code, Section 2256, and that such visual depictions were of such conduct, in violation of Title 18, United States Code, Section 2252(a)(2);

(b) to knowingly ship in interstate commerce visual depictions, the producing of said visual depictions involving the use of a minor engaging in sexually explicit conduct, as that term is defined in Title 18, United States Code, Section 2256, and that such visual depictions were of such conduct, in violation of Title 18, United States Code, Section 2252(a)(1).

4. It was part of the conspiracy that defendant RUBIN GOTTESMAN, doing business as X-CITEMENT VIDEO, INC., in Los Angeles, received from a source in Texas, numerous video cassette tapes featuring Tracy Lords, which contained visual depictions of a minor engaging in sexually explicit conduct.

5. It was part of the conspiracy that defendants RUBIN GOTTESMAN and STEVEN ORENSTEIN maintained the video cassette tapes featuring Tracy Lords in the inventory of X-CITEMENT VIDEO, INC., along with other sexually explicit materials for sale and distribution.

6. It was a further part of the conspiracy that defendants RUBIN GOTTESMAN and STEVEN ORENSTEIN, by and through the defendant entities, X-CITEMENT VIDEO, INC. and R.G. SALES COMPANY, would distribute and sell the video cassette tapes featuring Tracy Lords for money.

7. It was a further part of the conspiracy that defendants RUBIN GOTTESMAN and STEVEN ORENSTEIN, by and through the defendant entities, X-CITEMENT VIDEO, INC. and R.G. SALES COMPANY, along with unindicted co-conspirator HOWARD GOTTESMAN, would send an interstate shipment from Los Angeles, California to Honolulu, Hawaii, of video cassette tapes featuring a minor, Tracy Lords, engaging in sexually explicit conduct, and that they would receive payment for the shipment.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts, among others, were committed:

1. On about February 5, 1987, defendant RUBIN GOTTESMAN met with an undercover police officer of the Los Angeles Police Department at 7116-7118 De Celis Place, Van Nuys, Los Angeles, California, for the purpose of negotiating the sale of sexually explicit materials and advised said undercover police officer that he had approximately forty-nine (49) video cassette tapes featuring Tracy Lords, which he had received from a store in Texas.

2. On about February 5, 1987, at 7116-7118 De Celis Place, Van Nuys, Los Angeles, California, defendant STEVEN ORENSTEIN advised an undercover police officer of the Los Angeles Police Department of two video cassette tapes in the inventory at X-CITEMENT VIDEO, INC. that featured Tracy Lords when she was a minor, titled *Tracie Lords* and *Lust In The Fast Lane.*

3. On about February 5, 1987, defendant RUBIN GOTTESMAN quoted to an undercover police officer of the Los Angeles Police Department a price of $1,000 for Tracy Lords video cassette tapes, including *Tracie Lords* and *Lust in the Fast Lane.*

4. On about February 6, 1987, at 7116-7118 De Celis Place, Van Nuys, Los Angeles, California, defendant STEVEN ORENSTEIN and another employee at X-CITEMENT VIDEO, INC., brought two wrapped packages containing video cassette tapes featuring Tracy Lords, including *Tracie Lords* and *Lust In The Fast Lane,* to RUBIN GOTTESMAN for sale to an undercover police officer of the Los Angeles Police Department.

5. On about February 6, 1987, at 7116-7118 De Celis Place, Van Nuys, Los Angeles, California, defendant RUBIN GOTTESMAN gave video cassette tapes featuring Tracy Lords, including *Tracie Lords* and *Lust in the Fast Lane,* to an undercover police officer of the Los Angeles Police Department and received in return $1,000 cash as payment.

6. On about February 13, 1987, at 7116-7118 De Celis Place, Van Nuys, Los Angeles, California, defendant RUBIN GOTTESMAN met with and advised an undercover police officer of the Los Angeles Police Department that he had approximately fifty-six (56) Tracy Lords video cassette tapes available for sale.

7. On About April 28, 1987, an undercover police officer of the Los Angeles Police Department met with defendant RUBIN GOTTESMAN and unindicted co-conspirator HOWARD GOTTESMAN on the premises of X-CITEMENT VIDEO, INC. at 7116-7118 De Celis Place, Van Nuys, Los Angeles California, for the purpose of discussing additional sales of Tracy Lords video cassette tapes to the undercover police officer and a disguised method of shipping the Tracy Lords tapes to Hawaii without being detected.

8. On about April 28, 1987, unindicted co-conspirator HOWARD GOTTESMAN, at the direction of defendant RUBIN GOTTESMAN, pointed out to an undercover police officer of the Los Angeles Police Department specific tapes at X-CITEMENT VIDEO, INC., which featured Tracy Lords when she was a minor.

9. On about April 28, 1987, an undercover police officer of the Los Angeles Police Department gave RUBIN GOTTESMAN at 7116-7118 De Celis Place, Van Nuys, Los Angeles, California, a check in the amount of two hundred ($200.00) dollars as payment for sexually explicit video cassette tapes including tapes featuring Tracy Lords.

10. On about April 30, 1987, a cardboard box containing the following video cassette tapes:

a. *Sex Shoot*
b. *Aroused*
c. *Sweet Little Things*
d. *Harlequin Affair*

e. *Screaming Desire*
f. *Joys of Erotica Series 114*
g. *Pleasure Productions Volume 10*

was received at Blue Moon Distributors, 1750 Kalakaua Avenue, #3162, Honolulu, Hawaii 96826, bearing a return address of R.G. SALES CO., 7116 De Celis Place, Van Nuys, California 91406.

All in violation of Title 18, United States Code, Section 371.

THE GRAND JURY FURTHER CHARGES:

COUNT TEN

[18 U.S.C. §§ 2252(a)(2) & 2]

On or about February 6, 1987, at Los Angeles, in the Central District of California, defendants herein,

RUBIN GOTTESMAN and
STEVEN ORENSTEIN,

and the following defendant entity,

X-CITEMENT VIDEO, INC.,

did unlawfully and knowingly distribute visual depictions that had been transported in interstate commerce, the producing of said visual depictions involving the use of a minor engaging in sexually explicit conduct, as that term is defined in Title 18, United States Code, Section 2256, and that such visual depictions were of such conduct, to-wit:

The following video cassette tapes:

a. *Tracie Lords*
b. *Lust in the Fast Lane*

All in violation of Title 18, United States Code, Sections 2252(a)(2) and 2.

THE GRAND JURY FURTHER CHARGES:

COUNT ELEVEN

[18 U.S.C. §§ 2252(a)(1) & 2]

On or about April 30, 1987, at Los Angeles, California, in the Central District of California, defendant,

RUBIN GOTTESMAN

and the following defendant entities,

X-CITEMENT VIDEO, INC.,
and R.G. SALES COMPANY,

did unlawfully and knowingly ship in interstate commerce from Los Angeles, California to Honolulu, Hawaii, visual depictions, the producing of said visual depictions involving the use of a minor engaging in sexually explicit conduct, as that term is defined in Title 18, United States Code, Section 2256, and that such visual depictions were of such conduct, to-wit:

The following video cassette tapes:

a. *Sex Shoot*
b. *Aroused*
c. *Sweet Little Things*
d. *Harlequin Affair*
e. *Screaming Desire*
f. *Joys of Erotica Series 114*
g. *Pleasure Productions Volume 10*

All in violation of Title 18, United States Code, Sections 2252(a)(1) and 2.

FORFEITURE ALLEGATIONS

1. Counts Nine, Ten and Eleven (pages 27 through 33) of this indictment are hereby incorporated by reference as

is fully set forth herein for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 2253.

2. Through the aforesaid violations of Title 18, United States Code, Section 2252, the defendants, RUBIN GOTTESMAN, STEVEN ORENSTEIN, X-CITEMENT VIDEO, INC., and R.G. SALES COMPANY, have used and intended to use property in violation of Title 18, United States Code, Section 2252, and have possessed property constituting and derived from gross profits and other proceeds obtained from violations of Section 2252, making all such property used, intended to be used, property constituting and derived from gross profits and other proceeds obtained from violations of Section 2252 forfeitable to the United States, pursuant to Title 18, United States Code, Sections 2253(a)(1) and 2253(a)(2). Such property includes, but is not limited to, the interests held by RUBIN GOTTESMAN, X-CITEMENT VIDEO, INC., and R.G. SALES COMPANY, in the following assets and the proceeds thereof:

a. The real property, improvements, appurtenances and fixtures thereon, located at 22482 Calipatria Drive, Woodland Hills, Los Angeles County, California, and more particularly described as:

Lot 121 of Tract No. 29150 as per map recorded in Book 739 Page 57 of Maps, in the office of the County Recorder of said County;

b. The following stock certificates, holdings, interests and proceeds thereof:

i. All shares of stock of X-CITEMENT VIDEO, INC., owned by or on behalf of RUBIN GOTTESMAN;

ii. All shares of stock of R.G. SALES COMPANY, owned by or on behalf of RUBIN GOTTESMAN;

c. The following bank accounts and all funds credited to the accounts as of the date of this indictment:

BANK	ACCOUNT NAME	ACCOUNT NUMBER
Santa Clarita National Bank	X-CITEMENT VIDEO, INC.	404 034 392
Santa Clarita National Bank	X-CITEMENT VIDEO, INC. Payroll Account	404 035 208
Santa Clarita National Bank	X-CITEMENT VIDEO, INC. Special Account	404 034 422
Santa Clarita National Bank	X-CITEMENT VIDEO	404 033 221
Santa Clarita National Bank	R.G. SALES	404 033 248
Santa Clarita National Bank	RUBIN GOTTESMAN	404 376 218
Santa Clarita National Bank	RUBIN GOTTESMAN or BARBARA GOTTESMAN	404 374 010
Wilshire Center Bank	X-CITEMENT VIDEO, INC.	01 104 098

d. Any and all personal property of X-CITEMENT VIDEO, INC. "Property" means and includes, but is not limited to, the contents of the below-listed location, and any and all locations from which X-CITEMENT VIDEO, INC. conducted its business. "Contents" includes, but is not limited to, various items as follows: video cassette tape recorders and/or players, television monitors, telephone

systems and answering machines, video cassette tapes, including blank and recorded tapes, and other inventory, computer systems, including hardware and software, office equipment, including such items as calculators, cash registers, typewriters and copying machines, office furnishings such as desks, chairs and filing cabinets, shelving and display materials, United States currency, and other contents;

X-CITEMENT VIDEO, INC.
7116-7118 De Celis Place
Van Nuys, Los Angeles, California.

e. Any and all personal property of R.G. SALES COMPANY. "Property" means and includes, but is not limited to, the contents of the below-listed location, and any and all locations from which R.G. SALES COMPANY conducted its business. "Contents" includes, but is not limited to, various items as follows: video cassette tape recorders and/or players, television monitors, telephone systems and answering machines, video cassette tapes, including blank and recorded tapes, and other inventory, computer systems, including hardware and software, office equipment, including such items as calculators, cash registers, typewriters and copying machines, office furnishings such as desks, chairs and filing cabinets, shelving and display materials, United States currency, and other contents;

R.G. SALES COMPANY
7116-7118 De Celis Place
Van Nuys, Los Angeles, California.

THE GRAND JURY FURTHER CHARGES:

COUNT TWELVE

[18 U.S.C. §§ 922(g) & 924]

On about May 27, 1987, in the Central District of California, defendant,

RUBIN GOTTESMAN,

having been convicted on about November 14, 1980, in Case No. 80-59-CR-RYSKAMP (EATON), in the Southern District of Florida, of a crime punishable by imprisonment for a term exceeding one year, knowingly possessed in and affecting commerce, a firearm, to-wit: One (1) 9mm Mab Brevete semi-automatic pistol, Model P-15, bearing serial number 610743.

The grand jury further alleges that the property in question: one (1) 9mm Mab Brevete semi-automatic pistol, Model P-15, bearing serial number 610743, is subject to forfeiture.

All in violation of Title 18, United States Code, Sections 922(g) and 924.

A TRUE BILL:

_____

FOREPERSON

_____

UNITED STATES ATTORNEY
ROBERT C. BONNER

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CR 88-295-Kn
Volume 10

UNITED STATES OF AMERICA, PLAINTIFF

vs.

RUBIN GOTTESMAN, INDIVIDUALLY AND DOING BUSINESS AS X-CITEMENT VIDEO AND STEVEN ORENSTEIN, DEFENDANTS

Honorable DAVID V. KENYON, Judge Presiding

[38] • • • • •

THE COURT: What counts are those? I don't have my complaint in front of me.

MR. FLEISHMAN: One to eight is the obscenities, nine is the conspiracy count, 10 and 11 are the child [39] pornography, and then there is some forfeiture.

THE COURT: So you are arguing 10 and 11; is that right?

MR. FLEISHMAN: Yes, your Honor.

THE COURT: Okay.

MR. FLEISHMAN: Count nine is a conspiracy to violate the child pornography. That falls down and of course the conspiracy would fall with it.

THE COURT: All right.

MR. FLEISHMAN: I started in my memorandum on page 16 of count 10 of the indictment which reads—which

alleges, "That the defendants did unlawfully and knowingly distribute visual depictions that had been transported in interstate commerce, the producing of said visual depictions involving the use of a minor engaging in sexually explicit material and that such visual depictions were of such conduct."

This indictment, your Honor, tracks the statutory language. It's conceded—let me—let me take back "conceded." The cases make it clear that Congress intended to eliminate all scienter from the statute; that Congress intended that the defendant could be found guilty even if the person did not know or did not have any reason to believe that the actor was underage. That much is clear.

[40] Certainly, at the time that the indictment was handed down by the grand jury, the government consistently had taken that position. I call the Court's attention to the case of *United States versus Kleiner,* 663 F.2d 43 and there the Court said—

THE COURT: Forty-two? Did you say 42?

MR. FLEISHMAN: Page 43. 663 F.2d.

THE COURT: Okay.

MR. FLEISHMAN: The Court agreed with the government that the knowledge requirement under Section 2252—that's the section that we're being charged under—is not whether the tape had been made—using minors, but rather it is only the shipment of the sexually explicit material which must be knowing.

In the *United States versus Tolczeki*, T-O-L-C-Z-E-K-I, 614 F.2d 1424 at 142(a), the government stated the—stated merely—that the government really needs to show that defendant knowingly shipped in interstate commerce the prohibited material, and that the government need not know that the material contains sexual conduct of minors.

It went on to say that Congress specifically omitted mens rea. So we have a statute, your Honor, which on its face and giving effect to the Congressional intent, eliminated—

[41] THE COURT: Wait. That's the same ruling.

MR. FLEISHMAN: They both held that the government's contention was that they need not and the Court agreed in both of those instances.

Now, in this case, your Honor, the government, in its response to our motion for a judgement of acquittal has attached the opposition that it previously attached when a similar motion was made pretrial to dismiss these counts, and the government argues there that it no longer—it no longer believes that the scienter is out of these cases, that it now thinks that scienter is required. And indeed your Honor ruled, as I recall it, that the government has the burden of proving that the defendant knew that Tracy Lords was under the age of 18 at the time th[illegible]e made the films.

Now, with all due respect, your Honor, if the statute eliminates scienter and if the indictment is returned without the scienter element in it, that cannot be cured—that cannot be cured by any evidence that may be brought forward on—in the trial.

Now, the clearest answer in terms of that—that the statute is, in fact, unconstitutional on its face in that it eliminates all scienter was first really made clear in the opinion that Judge Kozinski wrote in United States against—United States District Court—

[42] THE COURT: What did you say? I just missed it.

MR. FLEISHMAN: That was made clear in the case that Judge Kozinski wrote.

THE COURT: Clear—that what?

MR. FLEISHMAN: That the statute is unconstitutional as it applies to a person who merely distributes the material as opposed to a person who produces the material.

And that stems from footnote circumstances, your Honor, which was found on page 543, preceding this footnote, and I guess I better get to that first.

THE COURT: Just so I have it in my notes here, the full cite of that case.

MR. FLEISHMAN: It's 858 F.2d, 534 and the footnote is on page—footnote six is on page 543.

On page 538, Judge Kozinski first makes it clear that knowledge of age is not required under the child pornography act, and then he cites *Smith* for the proposition that without some scienter requirement the statute would be unconstitutional as far as if it has the potential for any substantial chilling of free speech.

On page 539, he says, "a speaker may not be put at complete peril in distinguishing between protected and unprotected speech, and that strict liability is not consistent with the First Amendment where First Amendment rights come into play."

[43] He also pointed out that the penalty is a very heavy one, running as high as 10 years and a $100,000 fine. And he says that the First Amendment does not permit imposition of criminal penalties on the basis of strict liability where doing so would seriously chill speech.

And then we come to footnote six where he says:

"While it would undoubtedly chill the distribution of books and films if sellers were burdened with learning not only the content of all of the materials they carry, but also the ages of actors with whom they have no direct contact."

And in footnote six, Judge Kozinski drew a distinction between a person such as the defendant here who merely distributes the material and the defendants were involved in that case, which was the *Hamling* case, the defendants there were the producers of the film.

And, if I may, I would like to read footnote six because part of this argument is found there.

Footnote six reads: Defendants would have us go farther and hold that the First Amendment requires the government to prove scienter as part of its case. They rely on the Supreme Court cases holding that the government must carry such a burden in cases involving book sellers and other downstream distributors.

And then it says, see, for example, *Hamling* which [44] was cited:

"We do not view these cases as controlling here. Those who arrange for minors to appear in sexually explicit materials are in a far different position from those who merely handle the visual images after they are fixed on paper, celluloid or magnetic tape.

"While it would undoubtedly chill the distribution of books and films if sellers were burdened with learning not only the content of all of the materials they carry but also the ages of actors with whom they have had no direct contact," see *Smith*, "producers are in a position to know or learn the ages of their employees."

So that the rule that was established in the *Kantor* case first by Judge Letts and then affirmed by the 9th Circuit which is that so far as a producer is concerned, the government does not have the burden of proving that the defendant knew the age, but that the defendant has the opportunity to put forward as an affirmative defense that he or she did not know the age.

The difference there—and this is what Judge Kozinski spelled out at great length—that you could not—the Court could not, consistent with our constitutional framework, could not what is to say in the *Cantor* case, Judge Letts said that even though Congress did not provide for an affirmative defense of the kind that I [45] just spoke about that it was appropriate to put that affirmative defense in there; otherwise, the statute doesn't go that far.

Judge Kozinski says, Well, we can go that far because Congress didn't speak one way or the other as to whether or not we could have an affirmative defense but we couldn't contradict Congress and since Congress explicitly said that the government did not have to prove that the defendant knew the person was underage, that—as I say, you could go that far, but since it is true that a Court could not put into—could not construe a statute when construing it is in direct conflict with the congressional intent, what follows is that there's no—what your Honor did was an attempt to save the statute by saying, "Well, I'm going to throw the burden on the government to prove that the defendant knew that she was underage." But that really is to amend the statute in a way that is not permissible, and Judge Kozinski says it is not permissible in this case that we are talking about.

And, again, as I pointed out in our memorandum where we have the cases which say that the—if the indictment has failed, then it cannot be cured by anything that occurs on the trial and the indictment which merely follows the statutory language does not allege that the defendant knew that Tracy Lords was underage at the time that the shipment [46] was made. So—

THE COURT: Well—and you think the indictment would be valid if it said that?

MR. FLEISHMAN: No. Because the statute is still unconstitutional so that—it would—if I'm—it is—one thing is correct and undisputed as I read the case, that Congress read out all scienter. If they did that, then you have to look at the act on its face and say, Can Congress do that consistent with the First Amendment, and Judge Kozinski relying on *Smith* says the answer to that is no. If the statute's unconstitutional, then the indictment could not cure it.

All I'm saying is that there is a double here. First we get it out because the statute is bad, if for just to keep the thing going logically it becomes bad again when the indictment charges in statutory language in a way that is unconstitutional.

So the answer to your Honor's question is, no, the indictment could not cure the statute any more than a Court could. Rewrite the statute when Congress is clear on what its intent is and Congress had been extremely clear on what its intent was here, not to have the burden on the government to prove that the defendant knew that the person was underage. So that takes care of the statute on its face, and that is construed in this case.

[47] There is the additional argument that is—there are a number of them. The one that I briefed slightly, we will stay with that for a moment, is the justification for the statute vis-a-vis the federal interest and the state interest in protecting minors from abusive conduct.

In *Ferber*, the Court stated that the states—that New York has a compelling interest in protecting minors and in order to further that compelling interest, the state was justified infringing upon what would be First Amendment rights.

But in terms of our—our federal—state system, your Honor, this is something that is a matter of primary concern to the states and not the federal government. The federal government does not have the general powers that the states have to pass legislation for the good and welfare of the community. It is, of course, a—Congress has vast but nevertheless limited powers. There is no question that the government has power under the commerce clause to say that the —anyone who distributes child pornography in interstate commerce that Congress has the power—I'm not saying "power," but I'm saying that the federal interest

is attenuated. The federal interest in preventing people from taking pictures of minors that the federal interest is less than the state's interest and therefore, the—it's not as compelling. Indeed, we say [48] it is not compelling at all. It's compelling—it is a compelling interest looked at from the state side of view. It is an attenuated interest from the federal point of view. And when we balance in terms of what's the justification for suppressing speech—and that's what we are doing because it is conceded that the films involved are not obscene and are protected by the First Amendment. So you have to have a compelling justification for that. And in *Ferber*, the Court said the state had a compelling interest for doing it. And I'm saying that the federal interest is less than—how much less than I'm not going to try and get at—but it is something less than the state's interest. But that brings us to what seems to me to be the dispositive—a second dispositive resolution.

THE COURT: Can you wrap it up in five minutes and keep your word to the world?

MR. FLEISHMAN: Yes. I always keep my word. I'll do it in five minutes.

And that is that *Ferber*, the age was under 16, and in the opinion that Judge Kozinski wrote—I think it is footnote four, if my memory is right—yes. The legislative history reveals very clearly, your Honor, that Congress moved the age from 16 to 18 not because they wanted to reach conduct engaged in by those persons who were 16 and 17 years old, but to be able to effectively [49] reach those who were—who were 13, 14 and 15. And I'd like to read footnote four from the opinion. And, again, this is the case of *U.S. against United States District Court for the Central District of California* which I gave you the citation for which is also the *Kantor* case when it was before Judge Letts.

Here how footnote four reads—

MR. PITT: Excuse me. Is the *New York versus Ferber* case, Supreme Court case or underlying case?

MR. FLEISHMAN: Supreme Court *Ferber* case.

MR. BURGASSER: Now you are going to talk about the *Kantor* case?

MR. FLEISHMAN: At page 543, footnote four. It reads:

Congress was acutely aware of difficulty of prosecuting cases where the minor fell in the gray area around the age of majority. The house report on the 1984 amendments indicates that Congress raised the statutory age of majority from 16 to 18 in order to shift the gray zone upward. And they—and this is quoting now from the legislative history—"the prosecution for distribution is"—and then they have "sic." They made a mistake—"are most often based solely on the pornography which is the subject of the offense. The children cannot be located. Based on the pictures alone, the prosecution must [50] show that the child is under the age of 16. This is extremely difficult once the child shows any sign of puberty."

"Raising the age to 16"—sic—that is to say the report was in error but properly read it means—"raising the age to 18"—is making the correction—"would facilitate the prosecution of child pornography cases and raise the effective age of protection of children from these practices, probably not to 18 years of age, but perhaps to 16."

And then they go on this the same footnote and I'm skipping the citation which was in the footnote, they quote then the statement of Mark Richard, Deputy Assistant Attorney General, saying if the law were amended to protect minors under the age of 18 rather than 16, it would be easier to prosecute cases in which 14- or 15-year-olds have been sexually exploited by regarding—by regarding whom—but—but

regarding whom after proof of age is not available.

So translated, it is very clear that, A, the United States Supreme Court approved a New York statute which said that the person had to be under 16 years of age, that Congress moved that 16 up to 18 so that they could more effectively get at the exploitation of people under 15 years of age and that they were saying that usually the [51] only way you can tell by looking at the picture of the tape or there is a gray area and you can't tell, in our case, the government's case establishes that on their terms—on their terms Tracy Lords was always over 16 years of age so that this situation, in this case, your Honor, is one in which however you—

THE COURT: Do you think that they—people who were capable of writing this law didn't have in mind that on occasions they will be able to prove the age by some other means other than visual and therefore there should be—if you could do that, then if you prove that they're over 16, then it is not a violation of the law?

MR. FLEISHMAN: I think that is in the legislative history. I think if you look at the history more fully, they stated what the purpose of it was—

THE COURT: Well, it is clear—I mean, it may well be that they they figured that it was more serious for—the more younger you get, but I mean that may well be, but you have to consider them to be—quite frankly, rather stupid if they wrote a law that said, Well, If you really find one of these 16- to 18-year-olds that you can prove, then—forget that one. We don't really mean it. That's just really—particularly in light of the fact that—it may be—I mean, isn't it also—I'm just asking.

MR. FLEISHMAN: Sure.

[52] THE COURT: Isn't it also arguable, this Court just had probably not—it might be fair to say not a little experience with dealing with young people in trouble. And

and time and time again some of the difficult people—I mean age, young ladies particularly where they are enamored of some—oftentimes if they get enamored in the worst dying town, and they will do anything. It is their first love and they are 16—16, and they defy their parents, they defy everything they were ever brought up, for a couple of years they're out of control and then they come back into reality and settle down and some of them are pretty messed up by that time. And it's just—it's hard for the Court to believe that these people, while they were trying to get the 14-year-olds and the 13-year-olds, because that is just outrageous anymore, they were reluctant, apparently, to say, if you do it with a 16-year-old, you are in trouble.

MR. FLEISHMAN: No. I respectfully disagree. Again, we have to keep in mind that the basis of all of this when the law was first passed in 1977, the Department of Justice told Congress that they could not—that Congress could not make it a crime to distribute a portrayal of a person underage unless the material was obscene. That was because the Department of Justice then thought that there was not a sufficient compelling reason [53] to justify intrusion on First Amendment rights. That's the way the law read prior to the amendment in 1984 and the legislative history accompanying the 1984 act reflects that that is what it was. But then they said, "We looked at *Ferber* and we decided that we could follow *Ferber*." But *Ferber* was 16—16 or under. That was their model.

If I'm right, and I believe I am in saying that the state interest is more prominent interest than the federal interest in terms of that conduct, after all, we have a juvenile court, the federal government doesn't have fed juvenile court. This business of protecting children is primarily a state, not primarily a federal interest, although the federal government has an interest. I'm just saying it is an

attenuated interest. And I'm saying that there is a lesser interest, a far lesser interest in protecting a 16-, 17-year-old people, and it is fully legislative history. It goes two ways: one that Congress may be clear where—in those situations, where it is clear that the person is 16 years of age or over, that the law does not apply to that person. I believe that is absolutely clear from the legislative history and put it the other way. If you were to say it otherwise, then the—there's not a compelling interest in it. There's no sufficient—there's a great interest—a great interest that justifies draponia action if you fool around with 10-, [54] 11-, 12-, 13-, 14-year-old people. When you have a 16-year-old girl who is precocious, then the need to protect is much less and we just—justification for intruding upon First Amendment rights is lesser and would not be sufficient in this case.

Thank you. I think I came in just on time.

THE COURT: Okay.

MR. SCHWARTZ: May we take three or four minutes?

THE COURT: The problem that I have—you certainly may. Let me ask you one more thing to just kind of finish my thoughts.

When you are really saying it is all right, apparently, for the government to prove that a girl who is in fact, 15 years old, that she's at least under 18, she may be 16, she may be 17 so if, in this case, there was no other evidence except viewing the pictures and we have—let's assume we have experts come in and say that child's body that is a —well, it could be 16, it could be 15, it could be in that area, and then you say that's okay. It turns out it is 15—at least—the experts say at least she's 16, and that's all right because she's really 15. And we will never know that. That is a tough argument for you to espouse so vigorously it seems to me. Do you understand—

MR. FLEISHMAN: I understand you completely, your [55] Honor. It is, again one of these areas where there is—of course, I understand your Honor. Your Honor is putting your finger right on the problem. But the facts—

THE COURT: What you are saying is the government doesn't dare, if they want to prosecute somebody who is 16, they don't dare put on any positive evidence as to her exact age because if they do, they run into the Fleishman argument on—

MR. FLEISHMAN: It is not my argument, Judge. It is the Attorney General's argument, and it's the congressional one.

THE COURT: Whoever's argument it is—

MR. FLEISHMAN: I have some fanciful thoughts, but this is not one of them. I'm dancing to the tune of legislative history.

THE COURT: I understand: Thank you. That's.

* * * * *

[93] THE COURT: I don't ever mind re-visiting something again, if you got something to enlighten me.

MS. KOCKRITZ: Mr. Fleishman has made the statement that your Honor did deny the motion, but your Honor has admitted—amending—excuse me—the statute in the process and that simply is not the case as we stated. The statute requires knowledge element. There is the word "knowledge" in there. We put the word "knowledge" in our indictment. That's what we meant. Knowledge that this Tracy Lords film had child pornography in it.

We also believed that the legislative history requires and shows that the government in a distribution statute, Section 2252, prosecution, we have to show that the defendant had knowledge that there was child pornography in whatever he was distributing.

Mr. Fleishman cited the *Kantor* case, and I know that well. That case was—was addressing a different statute. That case addressed the question whether under the production of child pornography statutes which is section 2251, whether the government had to prove whether the producer had knowledge the child in the material was underage. That was a different case.

In that case, the Legislative History clearly showed that the government was not required in the production case to prove that the defendant had knowledge that the child [94] was a minority status. The defendant recognized that, the government recognized that, and the issue was whether that violated the First Amendment given that fact that it was written as a strict liability statute. Judge Kozinski agreed with Judge Letts that the government need not prove that, but he created a good-faith defense in a production statute so that the defendant can come in and give proof of his good-faith belief that the child was underage.

THE COURT: Was not.

MS. KOCKRITZ: Was not. That's not what we have here. We are admitting and accepting the burden that we do affirmatively have to prove that the defendant had knowledge that the minor was underage, and that's the way we charged it, and that's the way we have proved it. And the reasons why we accepted that burden have been for the past few years our experience in the way the cases—the distribution area had gone, as we noted in our motion, there are conflicting cases on this. But the most recent case that came out was the *Sharon* case in the Southern District of New York which went into a rather lengthy discussion with the Legislative History and which prompted everyone to do a rather lengthy discussion on the Legislative History. And that's whether we didn't come to the conclusion as we stated here, said in our motions,

and I believe we quote part of the Legislative History on the [95] response.

As to a distribution statute, it is clear in the Legislative History also that Congress meant that the government had to prove the defendant had knowledge that the minor was underage. And as I've said we accept that burden, and your Honor is not amending the statute at all to agree with us. We—as we've said, it is in the statute, it is in the Legislative History. We charged it, and we so proved it.

Again, I think I already talked about this federal interest, whether the federal government has a compelling interest in protecting minors such that the child pornography statute is valid. I think Mr. Fleishman's arguments and his quotations from the Legislative History help us as well. As he stated, there is every indication in the Legislative History that Congress amended the statute to raise the age to 18 to cover this gray area. And by that they meant the age whereby a minor who comes into puberty and shows signs of maturity. And it is very clear that Congress was just as interested in protecting those minors as well as the minors who have not shown the signs of puberty yet.

I think this is buttressed by, again, the *Ferber* decision where it says very clearly that there is a compelling governmental interest in protecting children [96] from the psychological, physical, mental damage that is done to them by engaging in child pornography. And this really is irrelevant when the child is precocious. There is no indication that Congress was checking out a child's history to determine whether or not she is harmed. There's not statistical survey to be done on how precocious she is in the past. The fact of the matter is Congress is interested in protecting children under the age of 18 and the Supreme Court has affirmed that this is a compelling interest because of the damage that is done to the child.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CR 88-295-Kn
Volume 11

UNITED STATES OF AMERICA, PLAINTIFF

vs.

RUBIN GOTTESMAN, INDIVIDUALLY AND DOING BUSINESS AS R.G. SALES COMPANY, STEVEN ORENSTEIN, AND X-CITEMENT VIDEO, INC., DEFENDANT

Honorable DAVID V. KENYON, Judge Presiding

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[4] **LOS ANGELES, CALIFORNIA, on Wednesday, May 3, 1989, beginning at approximately 8:00 a.m.**

THE COURT: All right. All right. Good morning. We will make a ruling.

As to the motion to dismiss—we really have two rulings, one having to do with the four films, and the other having to do with the minor, Traci Lords.

From the outset, the Court was impressed by the fact that the government felt that—apparently felt—that the common variety district court judge could determine what the community standards are in this central district area, not only because of the geographical enormity of the area, but of its amorphous and, at the same time, diverse character.

As far as the Court is concerned—it is the judge's opinion that we're dealing with certainly—that portions of each of the films, small in some places, were offensive personally to the Court.

The Court's personal view is that they're raunchy in entirety, vulgar, and all of the films were basically sleazy, but I know that the personal reactions of the Court are not the gauge by which we are to go. These are not snuff films and they're not slashing films; they don't involve children nor is there bestiality.

The great billing that the Court had that somehow [5] people will get sick by looking at these things—I suppose people can—I know the Court's reaction was that it had seen many things in this world that caused it to get closer to losing its morning breakfast, or what have you, than these films did. That business about vomiting and all, I frankly did not look forward to with anticipation and perhaps may have even been motivated in asking to see them all at once to get it over with—never really took place.

These films, perhaps are in-between or on-the-edge type of thing. They are certainly not as the films I've described, and those films, it would seem to me, in deciding what the community standard is in them, would be much easier, much easier, had there been a different standard to apply. Had the test been, for instance, by a preponderance of the evidence, I would suspect that the decision would be much easier to at least—or the ability to ascertain the community standard would have been much easier to apply.

But the government has what is so often referred to as "heavy burden," and it is a heavy burden of proving something beyond a reasonable doubt, that these films violate, in the appropriate ways, the community standards.

The public in this day and age apparently accepts some things that, when I was young, would never have been [6]

accepted. I remember the incredible problems that were raised over the film "The Outlaw." And here and then that film was, when I got to it and I finally saw it I guess years later or at some point than when it first all arose, I walked away and said, "What's the big deal?" The people were just really totally, totally wrapped up in the idea of a woman's bosom being seen in those days. And there was an apparent—well, there was a rape scene, I remember, in the hay or something in the barn or something that really—you couldn't see much.

Now, in this day and age, you see violence depicted on the screen that just gets to the point of just being horrifying. Kids go to movies and they pack in the movie houses of horror films that are just literally horribly shocking. It is what they go for, they go for it, I think. And except for the fact that these matters here are sexually explicit, there is stuff out there which is apparently accepted by the community which is far more morbid and shocking.

What the Court is called upon to say was that the community—and I'm trying to say this properly—the community will accept that kind of shocking thing, but that very same community you just have to know would not accept this kind of thing. And, quite frankly, without some kind of evidence to that effect, it is impossible for [7] the Court to say that, beyond a reasonable doubt, that violates the community standard.

We hear voices. We know that policemen don't like it, not all policemen. As a matter of fact, we don't know how many policemen like it. As a matter of fact, it is such a difficult subject to know what people think and what they really accept because they're not going to tell you. I don't know without some kind of survey or what have you what my next-door neighbor thinks about this. I know this: it's only logical that people who would not be shocked at this

or who would pass it off as nothing would not necessarily stand on the street corner and tell you that, but those who really are offended by it might well do that and do that.

I know that the social community in which I live—I mean the social community in which I live—some would think it's not very much. I am sure to an absolute person that, certain groups that I belong to, there probably wouldn't be a soul in the place who wouldn't be offended by it. They're a rather cool group in terms of not getting upset, but they would be offended by it. I don't think that they represent—at least I have no evidence—that that attitude represents the entire community's average person or what have you in the community of what that attitude is. [8] I'm simply saying that the Court finds itself in a position where it never found itself before, to have to kind of define whether something is true beyond a reasonable doubt without facts. This may be something that could be done in a small community. I have no doubt that I could probably say—if I went to a certain small community and lived there for a certain period of time—say, "Hey, the vast majority of people in this town would be incensed by this kind of thing." But the Court can't say it in Los Angeles in this day and age.

I sense, personally, that there probably is a charge taking place in this community in very recent months, but I can't say that was two years ago and I can't say how much of a change has taken place.

I don't know. And I just do not believe that, unless you have presented evidence to what this entire community believes, in this area, that any judge can say what goes on in the so-called, if I may, edge of this area of whether it's obscene or just pornographic.

I frankly, with all due respect, do not believe that because a film is shown or not shown or sold or rented on a shelf that that tells us that even the people who are in the

business believe that this is beyond the pale, not when you have laws against something that is beyond the pale and you are not sure what somebody else may think is beyond the [9] pale.

If I, as a video person, was selling these things and there was some questionable stuff over here that I might be prosecuted for, I would certainly, just out of sheer protection of my life, say, "Hey, it's not worth the risk," and not have it out there. It doesn't really equate with whether or not that falls within the community standard. So I cannot say beyond a reasonable doubt that the community standards were violated here.

As far as the Traci Lords business is concerned, the motion is denied, and I believe that the government's position legally and at this point factually is correct, and we should proceed on that basis, and I'll take five minutes and we will start.

MR. FLEISHMAN: Can the doctor be excused right now?

THE COURT: Sure I thought he would be gone by now.

MR. SCHWARTZ: We would then call Ruby Gottesman to the stand.

THE COURT: All right.

THE CLERK: Would you raise your right hand.

RUBIN GOTTESMAN, sworn.

THE CLERK: Would you state your full name and spell your last name for the record.

THE WITNESS: Rubin Gottesman, G-O-T-T-E-S-M-A-N.

[10] **DIRECT EXAMINATION**

BY MR. SCHWARTZ:

Q. Mr. Gottesman, if you would just pull that microphone closer to you.

A. Is this all right?
Q. Yes. How old are you, sir?
A. I'm 56.
Q. Where were you born?
A. New York City.
Q. Are you married?
A. Yes.
Q. And how long have you been married?
A. Thirty years.
Q. Do you have any children?
A. I have two children.
Q. Can you tell me something of the breakdown of these children?
A. I have a daughter, who is in the courtroom, Gail, she's 24, and I have a son, David, who is 20.
Q. Did you have any other children?
A. I had another son, Howard, who was 27.
Q. And what happened to Howard?
A. He was killed.
Q. Can you tell me about your—the extent of your education?
[11] A. I did go up to the second year in high school.
Q. So you quit in what grade?
A. I think it is the tenth grade.
Q. Now, were you ever in the armed forces of the United States?
A. I was in the Army during the Korean war.
Q. And what is your occupation, sir?
A. I'm a salesman.
Q. And how long have you been a salesman?
A. About 35 years.
Q. Do you own or operate any company?
A. I own and operate X-Citement Video.
Q. And what is X-Citement Video?
A. It is a video company.

Q. A video company?

A. It is a videotape company that is called a one-stop.

Q. Now, does X-Citement Video produce or manufacture any videotapes?

A. No, we don't.

Q. Exactly what is the function of the company such as that?

A. Well, what we do is buy from manufacturers and sell to the video stores.

Q. And approximately how many videos stores do you sell to?

[12] A. We have approximately about 5,000 to 6,000 customers.

Q. Now, prior to forming the company, X-Citement Video, what did you do?

A. I sold 16 millimeter movies.

Q. Sexually explicit movies?

A. Yes.

Q. And for how long a period did you do that?

A. About eight years.

Q. Now, did there ever come a time that you met or heard of a lady by the name of Traci Lords?

A. Yes.

Q. Can you tell the Court, please under what circumstances that came about?

A. Well, we were introduced at one of the trade shows, and then she came over my office one day. She was working in the Valley and she dropped by.

Q. And when was this, exactly, to the best of your recollection?

A. About three years ago.

Q. From that first meeting, until the present time, how many times would you judge that you saw Traci Lords and discussed things with her?

A. Well, between 40 and 50 times.

Q. Now, can you tell me what sort of a relationship you had with her?

[13] A. Well, it was a good relationship. She used me sort of as a confidant where she would come to me with her problems, and I would try to help her out. She had a lot of problems.

Q. What kind of problems?

A. Well, she had a problem with her mother. Her mother was always asking her for money, she had a problem with her husband, and she had a problem with drugs. She was having problems with producers not paying her the full amount of money that she thought she was supposed to get. And just run-of-the-mill problems of something working in the business.

Q. Now, specifically as to any problem involving drugs, what kind of problems was she experiencing?

A. Well, she had a drug habit. She had a cocaine habit. She was losing weight; she was gaining weight. She would try to lose weight because she wanted to be a fashion model, so she was taking drugs in order for her to lose weight fast. And I told her that is the wrong thing to do because, when you stop, you are going to gain it back. That's why her weight fluctuated so much.

Q. So based upon your observations, she was always going up and down in weight; is that right?

A. Absolutely.

Q. Did she express these anxieties to you about her weight [14] problem?

A. Yes. Because she had a couple of medical problems, because she had a weight problem.

MR. PITT: Objection. Motion to strike.

THE COURT: Sustained.

BY MR. SCHWARTZ:

Q. Now, did there ever come a time that you assisted her financially?

A. Yes. She came to me one day in tears and said that she had an opportunity to go to London, England for a modeling job, and she didn't have any money to go. And I couldn't believe it because she's been working—she must have, at that time, had had at least made 100 movies and still making movies. And I asked her where the money was? She said, "I need this job. Could you lend me $3,000." And I asked where. She said London. And I asked when are you going to give it back to me? And she said she would send it from London and give it to me in 30 days. And she would call in me two weeks. I balled her out. I told her she made a lot of money. What happened to all of it? And I finally gave her the money.

MR. PITT: I'm going to object to the hearsay and strike the entire answer.

THE COURT: What's the hearsay, Counsel?

MR. PITT: The hearsay is when she was going to pay [15] it, where she was going, what she was doing—

THE COURT: It was offered—I thought it was offered because she told him that.

MR. PITT: What's the relevancy if it's not offered for the truth?

MR. SCHWARTZ: It goes to the nature and extent of—

THE COURT: If it goes to his frame of mind eventually.

BY MR. SCHWARTZ:

Q. Was the debt ever paid back?

A. Well, what happened was she did call me from London and told me the modeling job didn't work out and she would be coming home. And she did come home two week after that and she came over and she paid me back the $3,000 and then besides that offered to lend me money.

Q. Now, how many films do you know of that were made of Traci Lords?

A. My educated guess—and I'm pretty well educated in that area, especially with her—I know for a fact is over 120 movies that she made. And then from the 120, what they did was they took parts of the 120 and they made another 50. There's at least 170 with her in it.

Q. Now, based upon your knowledge of her films, how would you rate her in the category of popular performers who are [16] in these films?

A. She was number one and there was no number two. She was so far ahead of everybody else.

Q. So far ahead in what way?

A. Her movies out sold every other movie made 10 to one. They sold in the millions.

Q. Now, in your own experience, how many Traci Lords films would you say that you sold through your one stop?

A. It's hard to estimate because when a Traci Lords movie would come out, normally we would buy 50 of a number—of a normal movie when her movie came out the initial order was 100, and then we backed it up partly with maybe another 200 or 400 more, depending on the movie. They always sold out and resold. The old ones were selling just as quick as the new ones.

Q. Were they always kept on stock?

A. Yes.

Q. Now, did there ever come a time when you heard stories concerning Traci Lords' age?

A. Yes.

Q. And can you explain that to us, please?

A. One day you come in and the phone is ringing and somebody saying, Did you hear the rumor about Traci Lords? I said, I didn't hear anything. And somebody else comes in and the same thing. There were rumors flying around.

[17] Q. What precisely were the rumors?

A. Is that she's underage.

Q. She was under the age of 18?

A. That she was under the age of 18 when she made these movies. And then I heard about another movie that she said she was over the age of 18 that came out around the same time period and which was totally confusing.

Q. Now, what did you do to try to confirm these rumors?

A. I tried calling her to check it out, and I couldn't get through. Her number was disconnected. Then I got calls from her lawyer, from her press agent. She—all of a sudden, she had a lawyer and a press agent and a manager.

Q. Now, did you try to get any confirmation through people in the business?

A. Nobody seemed to know. Nobody knew for sure. There were calls coming from all over the country.

Q. Insofar as the adult business is concerned, are rumors fairly commonplace?

A. Yes.

Q. Can you give examples?

A. There's a bust in Dallas, and these movies are no good here or there. I had a conversation before this trial even started, I said, "What movies are no good and what are good?" He says, "They're all no good. So there's your answer. We don't know. We don't know anything." The [18] business is so erratic that you never know what's going on, and the only way you know things is from rumors, and sometimes you don't believe them.

Q. Now, did you ever—or do you ever take steps to try to protect your customers when you hear these rumors?

A. Yes. We have a service business and our customers—we are in business with the video—X-Citement Video has been, eight years. And we try to keep our customers. It is a very competitive business. There's another 20 to 30

one-stops just like me, and they steal customers left and right. So in order to protect our business and keep our customers, we got to try to make them more personalized, more friendly to the customers.

Q. Now, with reference to this, did you take any steps in reaction to the rumors that you heard to notify your customers?

A. Well, to be on the safe side, you never know what is going on. So, you have to tell them, "We're not sure. We don't know. But maybe you should pull the tapes from the shelves and put them away for a while to see what happens. Don't send them back. Hold them and see what happens."

Q. Did people do that?

A. They said some day—some said they are waiting for the government to come down from the state or the government. So they continued to rent movies. What [19] happened was they stopped manufacturing them. And these people who continued to rent them, I just found out they are renting them because the people buying the—people renting were keeping them.

Q. For what purpose?

A. They felt they couldn't get them anymore. Instead of giving them back to the store, they paid the money and bought the tapes. So the video store ran out. It was in the last couple of months. But up to that time they were still renting them in every city.

MR. PITT: Object to hearsay. No foundation. Motion to strike.

THE COURT: Are you going to try to rehabilitate the situation?

BY MR. SCHWARTZ:

Q. Do you know what goes on as far as the types of materials being rented by various rental outlets throughout the United States?

A. Yes. I constantly monitored it on the telephone.

Q. And how many calls a day do you make concerning that?

A. Fifty to 100.

Q. And during the course of these—this in monitoring or inquiries—have you had an occasion to inquire about the activity on Traci Lords?

A. Yes.

[20] Q. And what specifically would you inquire as to?

A. Inquire what was going on with it. Nobody seemed to know it was legal in Europe, a lot of these movies that were made here, the manufacturers made them, they shipped them to Europe. They shipped masses to Europe. In Europe they never stop playing them.

Q. In the United States, how do you know Traci Lords films are continual—how do you know, of your own knowledge, that Traci Lords tapes were continuing to be rented following these—

A. From my customers.

Q. They told you?

A. Yes.

Q. Now—

THE COURT: The motion to strike is denied. It seems to me that he's established a certain expertise on the subject, and he's not called as an expert in a sense, but he's kind of—but I think he shows that he has expert knowledge on this subject.

BY MR. SCHWARTZ:

Q. Now, did there ever come a time that you requested that your customers were free, if they chose, to return tapes to you for credit?

A. Yes.

Q. When did that happen, to the best of your [21] recollection?

A. Well, right after the rumors started, we didn't know what to do. So the manufacturers started getting together and saying they would take a limited amount of Traci Lords movies. And there were some conditions. They had to be in good shape. That meant if the tape had been rented 50 times, you could tell from the wear and tape—the tape can last for ever. So a lot of these tapes were rented and her tapes were rented mostly every day. They were rented at least 50 to 100 times. Manufacturers were drawing the line. They said they are make—they made their money on these tapes. If there were relatively new ones coming out before the rumors, they were going to take those back. But the older ones out for two years and were in the stores and constantly rented and people made thousands of dollars, they had no right to ask for a full credit.

Q. How many tapes did you take back in exchange for credit?

A. I must have taken back $5,000.

Q. $5,000?

A. At least.

Q. Now, can you tell me what you—

A. Excuse me. I sell about 3,000 tapes a week out of the place.

THE COURT: Wait, wait. He took back 5,000 Traci [22] Lords tapes?

THE WITNESS: Yes.

THE COURT: And you sell 3,000 Traci Lords tapes—

THE WITNESS: No. 3,000 various tapes, of X-rated tapes, every week now at that time.

BY MR. SCHWARTZ:

Q. So 3,000 is about the volume of tapes that you sell a week?

A. Yes.

Q. Now, when these rumors filtered down and you heard about the rumors concerning Traci Lords' age, what did you believe those rumors were represented?

A. Absolutely false because I knew her.

Q. And what was the purpose of these rumors, as far as in your own mind?

A. What happened was this girl—or this woman, she had no money. She worked her head off for two years, and she kept on telling me she wanted to make a lot of money and quit. I says, "Quit now." She said, "I can't. I don't have any money." And she she told me she wanted to be a millionaire. She said, "You watch. I'll come up with something."

And all of a sudden, I hear a rumor that she has her own company, TLC, Traci Lords Company. I was—I aware of it, and they produced a movie. The movie was made in [23] Paris. And they day after this rumor started, that her birthday was in June or something, this movie comes out and this belongs to her. And Caballero, who was probably in a state of receivership at that time, took over the movie. And the figure I have of last week, they sold 100,000 copies of this movie. And I know for an exact that she got $10 a piece, every copy that was sold, royalties. So she made her million dollars. She—she was like—this—the way—every other movie in her mind became illegal. And this movie not only sold out—I sold approximately 6,000 pieces of this movie, more than any other movie in the history of my company. It just—and it continues selling. I just bought 50 yesterday. Got to buy them in 50s to get a discounted price. And I buy 50 at least once a week, and we sell them out. What it is is this is the movie that now people are buying because they feel that—it is the only movie that's out there. And just sells out. They don't rent it. They buy it.

Q. So, in effect, you are saying you helped create her own monopoly?

A. Exactly. She changed the name to Traci Lords. She's capitalizing on her name. She made a couple of TV talk shows. It doesn't hide the fact that she was in the X-rated movies. She's using that inhouse in Vegas in the last CS shows. There's people signing autographs. She's [24] in a section that is closed to the X-rated section. And she's signing autographs for aerobics tapes and her line must have been as long as all the other lines combined.

Q. Now, during the course of these rumors, did you ever get—were you—was it ever confirmed to you her age from any source?

A. Nobody ever told me her age. Nobody told me that she was underage.

Q. But what did you believe about it?

A. I knew she was overage because I knew her.

Q. How do you know?

A. She told me. She said, "Don't believe all this. This is my way to make a million dollars."

Q. Why didn't you tell everybody else if that was the case?

A. In this business, you really don't tell too many people—I made money on it. I tried to recoup some of the movies I lost on the $5,000. So I sold 5,000 of the other ones.

Q. Well, did there ever come a time when you met someone that identified himself as Steve Suzuki?

A. Yes.

Q. And when did you meet him, to the best of your knowledge? I don't want to go in all of that relationship. Just those years now.

[25] A. I was trying to do that during the trial. When we just moved to Van Nuys, it was the latter part of 1985.

Q. Now, you were present in court when you heard Officer Takeshita tell you that he felt you were on to him as him being a police officer and that you frisked him. Did that ever take place, to the best of your knowledge?

A. That was the funniest thing in my business.

Q. Why is that?

A. If you touch anybody, you are deemed gay and you sell movies you would be the laughing stock of the industry. If I thought he was a cop, I would tell him right out, "Get the hell out of here."

Q. Now, insofar as your business is concerned, does anyone need to be identified to come in and buy a tape?

A. No way. They could walk right in the door.

Q. And how do they gain access to see you?

A. They just come in and they ask for me and they come in. I have nothing to hide.

Q. Do you give access to your shelves so that people can see what is on the shelves?

A. That's the only way you sell tapes. It is just like a video store.

Q. Did you give that access to Steve Suzuki?

A. Absolutely.

Q. There came a time, wasn't there, that you sold him some [26] Traci Lords tapes?

A. Yes.

Q. In the–

A. Excuse me. Before this time, I've known him approximately two years. I mean, he was coming in–there's a lot of–the testimony stated in this courtroom was maybe six months after the fact, eight months after the fact. The testimony is when he started the wiretapping he came in eight months before that. He bought a lot of tapes from me.

Q. Did you ever tell him that Traci Lords was underage?

A. I think–I may have told him that there is a rumor going around that she's underage. But what happened was he was upstairs. He had the free run of the place, just like any other customer. He looked around and looked around, and he was looking upstairs for other tapes. We kept tapes upstairs. We would take downstairs depending–the tapes we kept unstairs were mostly defective that we were going to return. And he always looked through it because he was looking for certain tapes. He didn't care if they were defective or not. He goes upstairs and finds a box of Traci Lords tapes we didn't return. And what happens is, the manufacturers, they shut it down. They made a time limit. And the time limit was, if you didn't return the tapes by a certain day–because they were losing a lot of [27] money on the return tapes, you cannot return any tapes. And then a whole box load I brought back from Texas because he was my best customer, the fellow that testified here, and I had no choice but to take back his tapes. And these tapes were so worn and you can tell that they were shot. He was a good customer. I gave him a $40 credit on every one of these tapes. I took them into the place and they laid upstairs. Couldn't sell them. Didn't know what to do with it. And Steve came upstairs, and he looked in and he seen these tapes. He said, "You want to sell them?" I said, "Not really." He says, "Well, they are going to Hawaii. We are shipping them there and will be fine." I said, "The only way I'll do it is if you take them all and you could pay me $1,000." I knew a lot of these tapes were defective, and I didn't want them to come back. I figured if he pays cash, he can't stop the check. I didn't know whether the tapes were good or bad. I couldn't give them back, so that's why I asked for cash. I said–to keep the deal final, get rid of these tapes. And that's it.

Q. Did you discuss with him the fact that you were afraid to ship these tapes?

A. Yes, because you never know what is going on. The Meese Commission is out there, and it was, like, bad times. The timing was like—nobody knew what was going [28] on. Nobody was getting busted on Traci Lords movies. Nobody. Nobody was doing anything about it, and nobody—the rumors were consistent. And people—no law came down. No directive came down. These people—a lot of these are mom-and-pop stores. What they've done is 30 percent of their business is X-rated business. They can't afford to lose any of this business; otherwise, they would be out of business. I don't care what anybody tells you, 35,000 stores sell X-rated tapes, and what it is is they are embarrassed about it. They're ashamed about it. But yet they sell them. They keep them in the back. They keep them in the side. Some people keep them under the counter, but they go out.

Q. But, specifically, what does that have to do with having told Steve Suzuki that you didn't want to ship these tapes because this was kiddie porn and she was underage when she made them?

A. I felt that's what he wanted to hear just to get rid of him. It is like a sales talk. I wanted the things out of there. I gave a $40 credit on them. I gave it to him for $20. I lost $20 on it, and I salvaged what—some money back. And I knew he was always asking for kiddie things. He was asking for tapes that would—with animals in it and with defecation, urination, anything that—with young girls. He would say, "Which ones have the younger ones?" [29] He took a tape called Little Kimmie Johnson. The girl was short. Nothing to do with underage. And he bought five copies of it. When he found out it was a small girl—the girl was 21.

Q. And that was the little—the girl in Little Kimmie Johnson?

A. Yes. She's little because she was 5 foot tall.

Q. Were you interested in doing Mr. Suzuki any favors?

A. Well, at the beginning he was a good customer, and then he became a pain in the ass. He stopped buying. He was only buying odds and ends. But he also promoted me that he's going to open a big distributorship in Hawaii and when he opens there are a lot of people coming from Japan. In fact, he told me he just came back from Japan and he was going to buy a lot of tapes and stock this in Hawaii. And I felt I—you know, promote him for a good sale. And I read him—whatever he wanted to hear, I told him. But after a while he became a pain in the ass, and I seen that he wasn't buying anything—everything, like odd-ball things.

Q. Did he tell you to come fix up an order to him, that he was coming back to see you? Did there come a time?

A. Yes.

Q. When he came back, did you have that merchandise waiting?

[30] A. No, because I felt he was just ordering stuff that I wasn't stocking. I didn't have any more Traci Lords movies. I wasn't going out to go get them. And I didn't have the stuff he wanted. So, when he came back, I had nothing for him. I didn't care about him anymore. I felt he was using me.

Q. Now, at the time that you sold those Traci Lords tapes to the undercover agent, how old did you believe Traci Lords to be?

A. Over 18.

Q. And why did you believe that?

A. Because she told me.

Q. And when did she tell you that?

A. All along.

THE COURT: Where is Traci Lords now?

THE WITNESS: Are you asking me, your Honor?

THE COURT: Yes, sir. Where is she? Do you know?

THE WITNESS: The last I heard, she's in Redondo Beach.

MR. SCHWARTZ: Do you know where Traci Lords is now?

THE COURT: He just said—he said—the last he's heard, she's in Redondo Beach.

BY MR. SCHWARTZ:

Q. As far as her marital status, you mentioned that she [31] was married?

A. She is married to Tom Byron. That's what she told me. It was a secret marriage, and she didn't want anybody to know about it because she worked with other people in the movies. But if you notice, I think every single movie that she originally made, Tom Byron is in the movie.

MR. SCHWARTZ: Thank you. I have no further questions.

MR. FLEISHMAN: I have no questions, your Honor.

* * * * *

[149] MR. FLEISHMAN: If it is agreeable, first of all, on behalf of the defendant X-Citement, we now move pursuant to Rule 29(b) for a judgment of acquittal, and that may be taken under submission. And I would like permission if it is convenient to the Court to really not make any oral argument because my part of the argument will be legal and I would like a 10-day period in which to file a memorandum and it would be essentially an elaboration of the argument I've put forward. But I've never had a chance to put it forward as fully as I would like. I would ask for permission to present argument in lieu of a closing argument, a legal brief, but within 10 days on the issue of [150] the unconstitutionality of standards on its face and as applied.

THE COURT: What about the government? How would they like to proceed?

MR. PITT: Your Honor, Mr. Fleishman has entered a motion Rule 29 based upon the evidence at the close of the government's case. He's now presented evidence of Mr. Gottesman's testimony only. Unless it refers specifically to Mr. Gottesman's testimony, I see no reason to continue a Rule 29 motion for 10 days in order for him to make any submissions.

MR. FLEISHMAN: Well, I could make my argument now. I think it will be helpful to the Court.

THE COURT: Well, I have no problem with people submitting briefs on legal issues at the end of a case or at any time, but I do think that we should probably argue those things which are going to be orally argued now and get that over so that there's no need for people to come back into court although, if you are going to render a decision in a criminal matter, you really have to have everybody present.

MR. FLEISHMAN: If the Court, please, Mr. Schwartz is going to argue the factual aspects of the testimony with regard to knowledge. I would just like to, for the moment and on the assumption that I'll have 10 days in which to [151] brief it, to pinpoint what I think is the key argument on the scienter.

THE COURT: The only problem that I have is that you already have done that thoroughly within the last 24 or 48 hours, haven't you?

MR. FLEISHMAN: I think that I—my oral argument would not be helpful. I think my written argument in 10 days would be helpful, if I could preserve that.

THE COURT: What will be different than what's already in the—

MR. FLEISHMAN: I think the key thing where I think there is a disagreement between the Court and myself is

in terms of whether the statute is unconstitutional on its face on the scienter point. I think that has to be demonstrated from my point of view, and I hope that it would so demonstrate as the Court would see it. Congress indeed intended to eliminate scienter. They intended to, and I think we could demonstrate that.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CR 88-295-Kn
Volume 12

UNITED STATES OF AMERICA, PLAINTIFF

vs.

RUBIN GOTTESMAN, INDIVIDUALLY AND DOING BUSINESS AS R.G. SALES COMPANY, STEVEN ORENSTEIN, AND X-CITEMENT VIDEO, INC., DEFENDANT

Honorable DAVID V. KENYON, Judge Presiding

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[39] * * * * *

THE COURT: All right.

We have, as I understand it, the only issue now to decide is whether or not Mr. Gottesman and the defendant corporation is guilty of violating 2252. The Court is going to simply make the rulings and then possibly do some explaining.

The argument that 2252 violates the First Amendment, the Court does not agree with and that motion to dismiss on that basis is denied.

The Court finds that the indictment is pled—was pled sufficiently, that the statute requires knowledge on [40] the part of a distributor, and not only that there was child pornography and that as such would constitute sexually explicit photography of a minor as the person under 18

years of age, and—that requires knowledge of the fact the person was a minor.

The Court finds beyond a reasonable doubt that Mr. Gottesman knew or had reason to believe and did believe that Tracy Lords was a minor at the time. The evidence is fairly clear on that, quite clear as a matter of fact.

The Court finds that she was in fact a minor at that time. Regardless of the evidence that was adduced here today, I think that the evidence was sufficient. The mother's testimony was quite credible on that subject. There were other indicia of it: driver's license, birth certificate. The Court is convinced beyond a reasonable doubt that at the time she was a minor.

The Court believes that the statute was not simply designed to protect very young, shall we say, minors, but minors up to and including the age that Tracy Lords certainly was at the time, and that perhaps the real question is not a matter—it is a matter of seriousness, the case was, as opposed to, I'm sure, the younger you get, the more serious it gets in the sense that, if you have very, very young children, I have no doubt that the public would be—the vast majority of the public would be [41] incensed. She was close to the age of 18 and was—and that I think goes to the matter of how serious it was. But nonetheless I believe it is within the law. I think the law was designed to protect children. And until they are adults, that's what they are.

The Court finds that Mr. Gottesman is, as well as the defendant, guilty of violating that section of the law, and I'm going to ask the government to prepare proposed findings of fact and conclusions of law.

We will set this matter for sentencing at some time that is convenient to the parties.

* * * * *

Schoolgirl to porn queen

Davis Barber / Staff photographer

Traci Lords is shown in one of her many pornographic movies, all of which have been pulled from video store shelv

South Bay sex star was girl next door

By Dirk Broersma
Staff writer

By all accounts, Traci Lords is a charming young woman.

Even after her transition from a Redondo Beach schoolgirl to an American porn queen, friends and neighbors say she never seemed to lose her smile or innocence.

"She was as sweet as could be, the best neighbor you could ever want," said her former next-door neighbor on 162nd Street in Lawndale.

"She was absolutely the all-American girl," said the manager of the Highridge Apartments in Rancho Palos Verdes, where she lived until recently with a boyfriend.

These impressions contrast with the unsettling revelation last week that Lords made most of her 75 nationally distributed sex films while she was still a minor. News that one of the country's biggest sex stars made movies while as young as 15 prompted authorities to warn retailers they would be prosecuted if they continue to sell or rent any of Lords' films.

District Attorney Ira Reiner said his office has begun an investigation into the sex film makers who had "exploited" her. Although Lords offered false identification as proof she was of legal age, Reiner suggested that porn movie executives advised her to obtain a phony ID.

"They were using an attractive 15-year-old girl," Reiner said. "She was grist for the mill as far as they were concerned."

Authorities say Lords carried a state identification card with the name Kristie Nussman and a birthdate of Nov. 17, 1962, although she actually was born on May 7, 1968, in Steubenville, Ohio.

Lords is in seclusion and unavailable for interviews, according to her attorney, Leslie H. Abramson.

She reportedly moved to California with her mother and three sisters several years ago after her mother was divorced. They settled in north Redondo Beach.

Traci Lords' X-rated career started early

One of the earliest recollections of Lords came from a teacher who remembered her as eighth-grader Nora Kuzma, Lords' real name, at Lincoln Elementary School in Redondo Beach. In a letter to *The Daily Breeze*, the teacher said she discussed the sex star with Lords' younger sister. The teacher requested anonymity.

She "would speak to me about Nora and mentioned the fact that she quit school because she was making so much money. She gave me more information after [illegible] her sister up from her graduation dance and I commented that she had really changed since the eighth grade.

"I believe she did not realize that her sister was in sex movies, even though she mentioned films," the teacher wrote.

After graduating from Lincoln, Lords attended Redondo Union High School for two years before dropping out as a sophomore in 1983. Classmates there remember the voluptuous Lords as an attractive girl, who had boyfriends but few girlfriends.

Friends recall she was not a disciplin-

Porn / A1?

Porn

From page A

problem and that she was an average student, although she wasn't involved in any extra-curricular campus activities.

"She sat right by me in our world history class. She seemed nice and everything," Rana Chapkhaneh said.

"She had no reputation of being a slut or anthing like that. She seemed to me to be a regular girl. . . . (But) she pretty much hung out with guys," said another former classmate, who requested anonymity.

For a time, Lords ran with the heavy-metal crowd, although she shunned the distinctive clothes worn by teen-age fans of heavy-metal music, an acquaintance said.

After she dropped out of school, Lords ran away from home and began using the name Kristie Nussman, according to friends.

Department of Motor Vehicle records show Lords was issued the Nussman identification card on Jan. 25, 1984. The identification shows Lords resided in the 4500 block of West 162nd Street in Lawndale.

It's unclear when Lords began making pornographic movies, although classmates at Redondo Union say word of her new occupation circulated on campus after a centerfold photo of her appeared in the September 1984 issue of *Penthouse* magazine — the same issue that featured nude pictures of former Miss America Vanessa Williams. Although the article stated her age as 22, Lords was just 16 when the pictures were published.

Sometime after that, the first of Lords' porn films began to appear at local video stores.

"It was really funny," recalled a former schoolmate, "I was working in a video store and that's when I saw her picture on these movie cassettes. I said, 'My God, this girl looks familiar.' It looks just like her with a little more make-up."

Dan Rennison said he saw his former Redondo Union schoolmate while watching porno movies at a friend's house.

"I said, 'Wait a second, that chick went to Redondo.' I tripped out — she's pretty hard-core," Rennison said.

While students say it was common knowledge that their former classmate was a porn actress, teachers and school administrators at Redondo Union could not recall anything about her.

Jerry Goddard, the school's vice principal at the time, said he was shocked to learn that Lords attended Redondo Union.

Nora Kuzma in 1983 Redondo Union High School yearbook.

"I almost fell over. But I did not know her or know of her. As the person in charge of discipline, I probably would have been the last person to find out."

Walter Hale, superintendent of the South Bay Union High School District, declined to comment about Lords.

After she left school, acquaintances say, Lords often could be seen with her boyfriend driving around in a black sports car, shopping at Del Amo Fashion Center in Torrance and hanging out at the beach.

Sherri Mullin, a former employee at the Video Mart in Torrance, said Lords and her boyfriend shopped at the store frequently. She recalled how Lords stopped her boyfriend from entering the adult film section in the store.

"She said, 'Don't go in there,' you know, like, don't bring home one of those silly things. She always played like she had nothing to do with it but of course we all knew," Mullin said.

Another time, Mullin saw Lords at the Chic Accessories jewelry store at Del Amo Fashion Center, where Lords was buying a necklace.

"She looked really stunning," Mullin said. "She didn't look harsh or anything like that. One time I remember she was wearing some really gorgeous white boots, white pants and a nice white sweater."

Mullin said many people knew Lords wa a minor.

"I thought it was kind of funny that sh was my age and doing all this. But I neve said anything to her about it," she said.

Dave Ondo, manager of Video Mart, sai he became acquainted with Lords at a trac show in Las Vegas in January 1985. He calle her "bright" and "witty."

"Because of her professionalism and the wa she carried herself, I just figured it couldn be true," Ondo said. "You don't get to be N 1 in that industry by being an underage amatet But she has proved us all wrong."

Since the news broke last week that Lor was underage when she made her movies, On said he has been flooded with requests for h movies.

"It's on everybody's lips. I mean even t guy who doesn't watch adult videos is comi in and talking about it," he said.

Neighbors in the modest Lawndale neighb hood where she resided until last year sa Lords lived with a boyfriend who appeared be unemployed.

"I guess he was just freeloading off he Sergio Peralta said. "He used to yell at her a lo

Peralta was unaware that his neighbor w a porn star: "So that was Traci Lords? H moly!"

Another neighbor in Lawndale said he w good friends with Lords and that she did attempt to hide her occupation.

"Nowadays, it's any way you can make buck. I hope all this publicity helps her," s the neighbor, who declined to give his nar

The neighbor said Lords lived in Lawnd until about nine months ago. She then apparer moved to the Highridge Apartments in Ran Palos Verdes.

The apartment manager at the complex s Lords rented a one-bedroom apartment w her boyfriend. Lords often played tennis worked out in the weight room at the comp said the apartment manager, who declinec give her name.

About three months ago, the manager s Lords and her boyfriend broke up and mo out of the complex.

"As far as I was concerned she was ju model," she said. "I was shocked to death w I read about her."

GOVERNMENT EXHIBIT 220

[From Los Angeles Times, July 18, 1986]

Sex Films Pulled; Star Allegedly Too Young

By DAVE PALERMO
Times Staff Writer

Video shops and adult movie stores and theaters nationwide were pulling products featuring sex film star Traci Lords from their shelves Thursday because of an investigation by the Los Angeles County district attorney's office into allegations that she was underage when she made most of her movies.

Los Angeles police say that Lords, considered one of the top adult film actresses in the country, made about 75 sexually explicit movies and videos before she turned 18 last May, and adult film industry officials are being advised to stop selling and showing her movies to avoid criminal prosecution.

John Weston, attorney for the Adult Film and Video Assn. of America, said distributors should pull any film made before May, 1988, featuring Lords "in sexual conduct, no matter how briefly."

Failure to do so, Weston said, would violate the "consenting adult" ethic of the adult film and video association and subject its members to "very punitive state and federal laws."

People who knowingly use a minor in sexually explicit films or publications or who distribute or sell such materials can be prosecuted under state and federal laws on either felony or misdemeanor charges.

District attorney's spokesman Al Albergate said the investigation involves "Miss Lords and anybody who employed her." But there are no plans to widen the probe to include the entire adult film industry, he said.

District attorney's investigators last Friday searched Lords' Los Angeles area home, the Sun Valley offices of Vantage International Productions, a major producer of adult films, and the Sherman Oaks offices of modeling agent Jim Southe, who is credited with discovering the actress in 1984.

Southe and other industry officials interviewed Thursday said that Lords, on seeking employment, provided a California driver's license, a U.S. passport and a birth certificate, which stated that her name was Kristie Nussman and gave a birth date of Nov. 17, 1962.

Los Angeles Police Vice Sgt. Don Smith said, "I know for a fact the ID used by this young lady is not hers."

Police Capt. Jim Docherty said Lords was a 15-year-old runaway from Steubenville, Ohio, when she came here in 1984 and began her adult film career.

"Now she's the hottest thing going," he said.

Lords, who until recently lived in Redondo Beach, is secluded at an undisclosed location and could not be reached for comment Thursday, her attorney, Leslie H. Abramson, said. The lawyer said her client is "very confused and very scared and very upset and embarrassed about the whole thing. . . . My client did nothing illegal."

The attorney declined to comment on allegations that Lords made sexually explicit films before she turned 18. She also declined to divulge Lords' age or confirm whether her real name is Kristie Nussman.

"I will say she's indisputably over 18 now and therefore is free to do whatever she chooses," Abramson said.

The lawyer also said she was curious as to why the district attorney's office is investigating Lords. She said it is a far more serious crime for adult film producers and agents to use underage people in sex films and suggested that her client is being used "in somebody else's paddle game."

Smith said it would be difficult to attempt to prosecute an agent, producer or distributor who uses a minor in a sexually explicit film if they were given documents indicating that the person was over 18.

The adult film association's board chairman, Jimmie Johnson, said the withdrawal of Lords' films from the market would cost the industry millions of dollars.

"There are a lot of people who have a tremendous amount of money invested in her," Johnson said. "They are the ones being defrauded. Hopefully, the authorities are looking at it from that angle."

Smith said Lords has made at least 75 films and videos, "55 of which are very big sellers."

Lords also appeared in the September, 1984, issue of Penthouse Magazine. Leslie Jay, spokeswoman for Penthouse publisher Bob Guccione, said Lords showed identification indicating that she was over 18 before the photos were taken.

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CASE NO. CR-88-295-KN

UNITED STATES OF AMERICA, PLAINTIFF

VS.

RUBIN GOTTESMAN, ET AL., DEFENDANTS

Date: August 8, 1988
Time: 1:30 p.m.
Place: Courtroom of Judge David V. Kenyon

DEFENDANT STEVEN ORENSTEIN'S MOTION TO DISMISS COUNTS NINE AND TEN OF THE INDICTMENT UNDER THE NOTICE CLAUSE OF THE SIXTH AMENDMENT, THE INDICTMENT CLAUSE OF THE FIFTH AMENDMENT AND FOR FAILURE TO STATE AN OFFENSE

Defendant Steven Orenstein, by and through his attorney, respectfully moves this Court for an order dismissing counts nine and ten of the indictment in this case in the event that this Court declines to find 18 U.S.C. § 2252 unconstitutional for failing to require proof of scienter and judicially construes 18 U.S.C. § 2252 to require proof of knowledge of the character of the material and the age of the performer in order to support a conviction. Should this Court judicially construe the statute to remedy its present constitutional defect regarding proof of adequate scienter, then defendant contends that counts nine and ten of the indictment must be dismissed for

failure to state an offense in that those counts fail to allege that defendant had knowledge of the content and character of the materials at issue, or knowledge that the individual depicted was underage.

A brief in support of this motion is attached hereto.

/s/ J. Michael Murray

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Attorney for Defendant
Steven Orenstein

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CASE NO. CR-88-295-KN

UNITED STATES OF AMERICA, PLAINTIFF

VS.

RUBIN GOTTESMAN, ET AL., DEFENDANTS

Date: August 8, 1988
Time: 1:30 p.m.
Place: Courtroom of Judge David V. Kenyon

DEFENDANT STEVEN ORENSTEIN'S MOTION TO DISMISS COUNTS NINE AND TEN OF THE INDICTMENT AND THEIR CORRESPONDING FORFEITURE ALLEGATIONS ON THE GROUND THAT THE STATUTES UPON WHICH THEY ARE PREMISED ARE UNCONSTITUTIONAL UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

Defendant Steven Orenstein, by and through his attorney, respectfully moves this Court pursuant to Fed. R. Crim. P. 12(b)(2), for an order dismissing counts nine and ten of the indictment and their corresponding forfeiture allegations. The grounds for this motion are as follows:

1. Title 18 U.S.C. § 2252, the statute on which counts nine and ten are premised, is unconstitutionally overbroad;

2. Title 18 U.S.C. § 2252 unconstitutionally permits the imposition of criminal responsibility without requiring

proof of defendant's knowledge of the nature of the material involved or knowledge that the material involved an underaged actor or actress; and

3. Title 18 U.S.C. § 2253 unconstitutionally chills protected speech, effectuates a prior restraint, and is overbroad, and therefore, is violative of the First Amendment.

A brief in support of this motion is attached hereto.

/s/ J. Michael Murray

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Steven Orenstein

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CASE NO. CR-88-295-KN

UNITED STATES OF AMERICA, PLAINTIFF

vs.

RUBIN GOTTESMAN, INDIVIDUALLY AND DOING BUSINESS AS
STEVEN ORENSTEIN, AND
X-CITEMENT VIDEO, INC., DEFENDANTS

MOTION FOR JUDGMENT OF ACQUITTAL BY DEFENDANT X-CITEMENT VIDEO, INC. PURSUANT TO RULE 29, RULES OF CRIMINAL PROCEDURE AND MEMORANDUM IN SUPPORT

COMES NOW the defendant X-Citement Video, Inc., and moves the court for a judgment of acquittal on counts 1 through 8, inclusive, pursuant to Rule 29, Rules of Criminal Procedure.

This motion is based upon all the files and record herein and the attached memorandum.

Fleishman, Fisher & Moest
Stanley Fleishman

By: _____
STANLEY FLEISHMAN
Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CASE NO. CR-88-295-KN

UNITED STATES OF AMERICA, PLAINTIFF

vs.

RUBIN GOTTESMAN, INDIVIDUALLY AND DOING BUSINESS AS
STEVEN ORENSTEIN, AND
X-CITEMENT VIDEO, INC., DEFENDANTS

(PROPOSED) FINDINGS OF FACT RE COUNTS 9, 10, 11

In this case, tried without a jury, the Court has heretofore entered a judgment of acquittal pursuant to 29(a), on Counts 1 through 8, on the ground that the evidence submitted by the Government was insufficient to sustain a conviction under said counts. Specifically, the Court concluded that it could not find beyond a reasonable doubt that the charged tapes were obscene under the three prong test announced in *Miller v. California,* 413 U.S. 15 (1973).

At the time the Court granted the motion regarding Counts 1 through 8, the Court denied defendants' motion for a judgment of acquittal pursuant to Rule 29(a) on Counts 9, 10, and 11. Thereafter, defendant Rubin Gottesman testified that he did not know Traci Lords was under 18 years of age at the time she made the films defendants transported in interstate commerce.

After considering all the evidence in the case, the Court concludes that it cannot find beyond a reasonable doubt

(1) that Gottesman knew Tracie Lords was under 18 years of age when she made the tapes defendants shipped in interstate commerce, or (2) that she was in fact under the age of 18 when she made said tapes. Accordingly the Court finds defendants not guilty on Counts 9, 10, and 11.

The Court now makes its Findings of Fact and sets forth its reasons for finding defendants not guilty on Counts 9, 10, and 11.

FINDINGS OF FACT

1. Count 10 and 11 of the indictment alleges that defendants conspired to violate the Sexual Exploitation of Children Act, 18 U.S.C. § 2252, and Counts 9 and 10 allege a violation of said section.

2. Title 18 U.S.C. § 2252 provides in relevant part:

> (a) any person who—
>
> (1) Knowingly transports or ships in interstate . . . commerce . . . any visual depiction, if—
>
> (A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and (B) such visual depiction is of such conduct. . . .
>
> shall be punished as provided in subsection b of this section.

3. In Count 10 of the indictment the Grand Jury charged that defendants "did unlawfully and knowingly distribute visual depictions that had been transported in interstate commerce, the producing of said visual depictions involving the use of a minor engaging in sexually explicit conduct . . . and that such visual depictions were of such conduct."

4. In Count 11 of the indictment the Grand Jury charged that defendants "did unlawfully and knowingly

ship in interstate commerce from Los Angeles, California, to Honolulu, Hawaii, visual depictions, the producing of said visual depictions involving the use of a minor engaging in sexually explicit conduct . . and that such visual depictions were of such conduct."

5. The elements of the crime of violating § 2252 are as follows:

1. That the defendant knowingly distributed visual depictions that had been transported in interstate commerce, or had been shipped in interstate commerce, visual depictions.

2. That the visual depictions were of sexually explicit conduct as that term is defined in the Act.

3. That the production of the visual depictions involved the use of a minor under the age of 18 engaging in the sexually explicit conduct.

6. Although the indictment does not allege that defendants *knew* that the visual depictions involved the use of a minor under the age of 18, the Court ruled in deciding a pre-trial motion that the Government was required to prove beyond a reasonable doubt that the defendants knew that the person depicted in the charged tapes was under 18 years of age. *See* Government's Response to Motion for Judgment of Acquittal at 5.

7. The Government proved beyond a reasonable doubt:

1. That the defendant knowingly transported in interstate commerce, and shipped in interstate commerce, visual depictions of a person identified as Traci Lords.

2. That the visual depictions were of sexually explicit conduct as defined in the Act.

8. A. The Government did not prove beyond a reasonable doubt that defendants knew that Traci Lords was a minor under the age of 18 when she made the tapes introduced into evidence.

In the tapes Traci Lords was presented as an experienced woman, and the box in which the tapes were enclosed stated that all actors were over the age of 18. According to Government Exhibit 220 (*Los Angeles Times*, July 18, 1986), video shops and adult movie stores were pulling product featuring Traci Lords because of an investigation by the Los Angeles County District Attorney's Office into allegations that she was underage when she made most of her movies. Tracie Lords was, according to the story, one of the top adult film actresses in the country, having made about 75 sexually explicit movies and videos while she was allegedly under 18 years of age. Gottesman testified that she in fact had made 110 such films prior to the time rumors surfaced suggesting that she may have been under 18 years of age.

Gottesman testified that in real life, and in the films, she appeared physically mature, and her demeanor, sophistication, and apparent sexual experience belied her minority. Shortly before the rumors started circulating, Traci Lords told Gottesman in person that she was going to take action to make a million dollars, and that he should not believe the stories he might soon hear about her. At about that time Lords showed Gottesman her passport, which revealed that she was 20 years of age. Gottesman knew that at the time her first tapes were released, sexually explicit pictures of Lords appeared in *Penthouse*, a nationwide publication. He also knew that for some two years her tapes were distributed nationally with immunity and that despite her extreme popularity and reknown, no one suggested that she was a minor prior to the time the rumors surfaced.

Gottesman testified that he believed Traci Lords, and those around her, planted a false story that she was underage when she made the 110 tapes, to drive them off the market so that they would not compete with the new hard-

core films she intended to make, and did make, which enriched her.

The newspaper stories relied upon by the Government to support its assertion that Gottesman *knew* that Lords was underage when she made the tapes introduced into evidence, proved at most that Gottesman was on notice that Lords may have been underage. Government 220 (the *Los Angeles Times* July 18, 1986 story) states that Lords was "*allegedly* too young," and that she "*may* have been a minor." The story states "Lords, on seeking employment, provided a California drivers license, a U.S. passport, and a birth certificate, which stated that her name was Kristie Nussman and gave a birth date of November 17, 1962. The story states that Lords' attorney "declined to comment on allegations that Lords made sexually explicit films before she turned 18," and "declined to divulge Lords' age or confirm whether her real name is Kristie Nussman." The attorney did state that Traci Lords was then "indisputably over 18." Officer Smith was quoted as stating "it would be difficult to attempt to prosecute [a] . . . distributor . . . if they were given documents indicating that the person was over 18." Finally the article states that "Lords also appeared in the September 1984 issue of *Penthouse Magazine*," and that a spokesperson for *Penthouse* said Lords "showed identification indicating that she was over 18 before the photos were taken."

Gottesman, unlike those who arranged for Traci Lords to appear in sexually explicit materials, does not have the burden of affirmatively proving that he had a reasonable, good faith belief that Traci Lords was over 18 years of age. Similarly, unlike those who produced the films, Gottesman need not prove that he acted with appropriate prudence in making certain that Lords was of age when she appeared in the films he distributed. *See, U.S. v. U.S. Dist. Court for Cent. Dist. of Cal., supra,* at 542-543.

It may be that on the record in this case a trier of fact could find that the *producer* of a film had not met *his burden of proving* a "reasonable, good faith belief" that Traci Lords was over 18 years of age. But the record does not support a conclusion that the *Government proved beyond a reasonable doubt* that Gottesman knew that Traci Lords was underage when she made the films. Traci Lords looked like she was over the age of 18, she acted as if she was over that age, and before the rumors started, everyone believed her to be over 18. At most, the record would support a conclusion that Mr. Gottesman should have been suspicious as to Traci Lords' true age, but that suspicion is an insufficient basis to find beyond a reasonable doubt that he *knew* Traci Lords was underage. Suspicion and skepticism is not an acceptable basis upon which to find something is true, "beyond a reasonable doubt."

B. The Government also failed to prove beyond a reasonable doubt that the tapes introduced into evidence were made at a time when Lords was in fact under 18 years of age. The sole evidence introduced by the Government on this aspect of the case was Traci Lords' mother who was shown various scenes of Traci Lords and gave her opinion that she appeared to be 16 years of age in some and 17 years of age in others.

The Government attempted to bolster this aspect of its case by introducing certified copies of copyright registrations, which would purportedly identify the time the various films were made. The Court excluded this evidence, finding that without a showing that the certified copies of the copyright refers specifically to the actual tape before the Court, such evidence is inadmissible.

Without more proof than the testimony of Traci Lords' mother, the Court cannot say beyond a reasonable doubt that Traci Lords was in fact under 18 years of age when she made the tapes introduced into evidence.

9. The Court questions whether the Act applies to a case like this one, where the actress engaged in a deliberate successful effort to decieve the adult industry comes within the reach of the Sexual Exploitation of Children Act. *See, U.S. v. U.S. Dist. Court of Cent. Dist. Cal., supra,* at 543. As the Court noted, the Traci Lords tapes are fully protected by the First Amendment and their suppression would violate the First Amendment unless justified by a compelling societal interest.

In *United States v. Kantor, supra,* Judge Letts questioned "the societal interest in protecting children, which constitutes the justification for restricting rights otherwise secured by the First Amendment, extends to persons between the ages of 16 and 18." *Id.* at 1428. He stated that when Congress amended the Act in 1984 by raising the specified age from 16 to 18 the legislative history could be interpreted as designed to reach cases "involving people 13 to 14-years of age. *Id.* at 1429 n. 42. Stating that "there comes a point at which the prohibition against employing underage performers" does not serve a sufficiently legitimate governmental interest to justify suppression of protected speech, he concluded that "that point is reached when the affected performers are sufficiently 'adult' so as to be no longer the legitimate subjects of protection of 'children.' " In the interest of protecting children he stated Congress "can prohibit the use only of those who truly are children in such performances." *Id.* at 1429. Judge Letts stated that "the societal interest in protecting 16 and 17-year old 'children' begins to be strained," because "[a]t age 18 society will allow these persons to vote and to volunteer for a wholly foreign war." *Id.* at 1430. Furthermore, he noted as individuals reach the ages of 16 and 17 it is "no longer clear that Congress is protecting them from engaging in acts with which they would otherwise have no experience." *Id.* at 1430 n.43.

For better or worse, many 16 and 17-year old girls are sexually active. Indeed, many of them marry by that age, as was apparently true of Traci Lords. Given the fact that the Traci Lords tapes are not obscene, and that they are fully protected by the First Amendment, there is no adequate justification for branding Rubin Gottesman a child pornographer for distributing those tapes in this case.

CONCLUSIONS OF LAW

The Court finds the defendants not guilty of violating Counts 9, 10, and 11 of the indictment because the Government failed to prove beyond a reasonable doubt that defendants knew that Traci Lords was underage when she made the films defendants transported or shipped in interstate commerce and the Government failed to prove beyond a reasonable doubt that Traci Lords was in fact underage when she made the films introduced into evidence.

The Court is aware, of course, that it should not decide constitutional questions when it is unnecessary to do so. Accordingly, the Court does no more than invite Congress to re-examine § 2252 in light of *U.S. v. U.S. Dist. Court for Cent. Dist. of Cal.*, 858 F.2d 534 (9th Cir. 1988) particularly footnote 6. The Court reads that opinion as suggesting that § 2252 may be unconstitutional on its face because the Act does not require a distributor of constitutionally protected film know that the person depicted in the charged material was under 18 years of age. *See Smith v. California*, 361 U.S. 147 (1959). Judge Kozinski wrote that his reading of *Smith* "suggest that the First Amendment does not permit the imposition of criminal sanctions on the basis of strict liability where doing so would seriously chill protected speech." 858 F.2d at 540. In footnote 6 he stated that it would "undoubtedly chill" the distribution of films if sellers were burdened with learning "the ages of actors with whom they have had no direct contact, *see Smith*, 361 U.S. at 153-54. . . ."

Even if § 2252 could be rewritten to save it, the indictment would still be fatally defective because it does not allege that defendant knew Traci Lords was under 18 years of age. *Russell v. United States*, 369 U.S. 749, 771 (1962); *Stirone v. United States*, 361 U.S. 212, 218 (1960); *United States v. Pazsint*, 703 F.2d 420, 423 (9th Cir. 1983) ("After an indictment has been returned, its charges may not be broadened through amendment – whether it be by physical alteration, jury instruction, or bill of particulars – except by the Grand Jury.")

_____

DAVID V. KENYON
Judge, United States District Court,
Central District of California

Dated: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CASE NO. CR-88-295-KN

UNITED STATES OF AMERICA, PLAINTIFF

vs.

RUBIN GOTTESMAN, INDIVIDUALLY AND DOING BUSINESS AS
STEVEN ORENSTEIN, AND
X-CITEMENT VIDEO, INC., DEFENDANTS

(PROPOSED) FINDINGS OF FACT RE COUNTS 9, 10, 11

ERRATA SHEET

1. Finding 1 at page 2 lines 18-21 should read as follows:

> 1. Count 9 of the indictment alleges that defendants conspired to violate the Sexual Exploitation of Children Act, 18 U.S.C. § 2252, and Counts 10 and 11 allege a violation of said section.

2. Paragraph 5(1) page 3 lines 20-24 should read as follows:

> 5. The elements of the crime of violating § 2252 are as follows:
>
> > 1. That the defendant knowingly transported or shipped in interstate commerce visual depictions.

Dated: May 16, 1989

Respectfully submitted,
Fleishman, Fisher & Moest
Stanley Fleishman
By: /s/ Stanley Fleishman
STANLEY FLEISHMAN
Attorneys for Defendant

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Supreme Court of the United States

No. 93-723

UNITED STATES, PETITIONER

v.

X-CITEMENT VIDEO, INC., ET AL.

ORDER ALLOWING CERTIORARI.
Filed February 28, 1994.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

February 28, 1994

U.S. GOVERNMENT PRINTING OFFICE: 1993—301-157/86140